

Exhibit 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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KIMBERLEE WILLIAMS, : CIVIL ACTION
et al., :
Plaintiffs, :
 :
vs. :
 :
BASF CATALYSTS, LLC, :
et al., :
Defendants : NO. 2:11-CV-1754
- - -

MONDAY, MAY 14, 2018
- - -

Videotaped deposition of
ARTHUR DORNBUSCH, was held at the law offices
of Littleton, Park, Joyce, Ughetta & Kelly,
141 West Front Street, Suite 120, Red Bank,
New Jersey, commencing at 9:06 a.m., on the
above date, before Deborah A. Brazukas, a
Registered Professional Reporter, Certified
Shorthand Reporter of New Jersey, License No.
XI 01938, and Notary Public.

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6 et al. *

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13 (* Exhibit marked prior to start of
14 deposition.)

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12 Question Marked

13 Page Line

14 None

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1 THE VIDEOGRAPHER: We are now
2 on the record. This begins DVD No. 1 in
3 the deposition of Arthur Dornbusch in the
4 matter of Kimberlee Williams, et al.
5 versus BASF Catalysts, LLC, et al., in
6 the United States District Court for the
7 District of New Jersey, Civil Action No.
8 2:11-cv-1754.

9 Today is May 14th, 2018, and
10 the time is 9:06 a.m. This deposition
11 is being taken at 141 West Front Street,
12 Red Bank, New Jersey, at the request of
13 Cohen, Placitella and Roth.

14 The videographer is Ray Moore
15 of Magna Legal Services and the court
16 reporter is Debbie Brazukas of Magna
17 Legal Services. Counsel will be noted
18 on the stenographic record.

19 Will the court reporter please
20 swear in the witness.

21 - - -

22 ARTHUR DORNBUSCH, after having
23 been duly sworn, was examined and
24 testified as follows:

1 - - -

2 EXAMINATION

3 - - -

4 BY MR. PLACITELLA:

5 Q. Good morning, Mr. Dornbusch. How
6 are you?

7 A. Good morning.

8 Q. I can make you a promise before
9 we start. This will be a lot shorter than
10 the last time we were together.

11 A. That would be good.

12 Q. As you know, I'm Chris
13 Placitella, and I'm here to get your
14 testimony today.

15 You currently reside where?

16 A. Six Harbor Drive in Rumson, New
17 Jersey.

18 Q. And you went to Yale to get your
19 bachelor of arts?

20 A. I did.

21 Q. And then University of
22 Pennsylvania Law School?

23 A. Yes.

24 Q. All right. Did you ever sit for

1 any -- the New Jersey bar?

2 A. No.

3 Q. Okay. Am I correct that your --
4 that you started with Engelhard in 1976?

5 A. Yes, December '96.

6 Q. And your first job was
7 assistant --

8 A. '76.

9 Q. -- general counsel?

10 A. Yes.

11 Q. Okay. At that time, what were
12 your job responsibilities?

13 A. I was responsible for the general
14 legal support of certain of the business --
15 sub business groups. I don't recall
16 specifically which ones. I know that one of
17 them was the systems, air -- air and systems
18 water group located in Union, New Jersey.
19 And there were other groups too, but at that
20 time, I'm not sure what they were.

21 Q. Okay. And am I -- in 1980, you
22 became the vice president and general counsel
23 of Minerals and Chemicals --

24 A. Yes.

1 Q. -- is that fair?

2 And what were your
3 responsibilities as vice president and
4 general counsel for Mineral and Chemicals?

5 A. I was responsible for all of the
6 legal affairs of that division. That was one
7 of three divisions of Engelhard, Minerals and
8 Chemicals Corporation.

9 Q. Okay. In that capacity, did you
10 do work on the talc litigation?

11 MR. FARRELL: Objection to
12 form.

13 THE WITNESS: Yes. I'm not
14 sure at what point talc litigation
15 ensued, but yes.

16 BY MR. PLACITELLA:

17 Q. Okay. And in 1984, did you
18 become the corporate secretary for Engelhard?

19 A. Yes.

20 Q. All right. And as corporate
21 secretary, did you attend board meetings?

22 A. Yes, I did.

23 Q. Okay. In 1984, did you become
24 vice president and general counsel for the

1 entire Engelhard Corporation?

2 A. Yes.

3 Q. Okay. In 1984, did you become
4 responsible for the legal affairs of the
5 company?

6 A. Yes.

7 Q. Okay. Did that include reviewing
8 financial disclosures?

9 A. Yes.

10 Q. Were you considered an officer of
11 the corporation at that point?

12 A. Yes.

13 Q. From -- when -- in 1984, were you
14 in charge of supervising litigation relate --
15 related to Engelhard?

16 A. Yes.

17 Q. Okay. And did that include the
18 Emtal talc litigation?

19 MR. FARRELL: Objection to
20 form.

21 THE WITNESS: Yes.

22 BY MR. PLACITELLA:

23 Q. Okay. Did you keep that title
24 into 2006, when you retired?

1 A. Yes.

2 Q. Okay. And did your
3 responsibilities change at all from 1984 to
4 2006, when you retired?

5 A. No.

6 Q. Okay. So, you know, we're here
7 to talk about the -- the talc litigation, so
8 I want to just ask you some questions.

9 When is the first time that
10 you learned there were reports indicating
11 that there was asbestos in Emtal talc?

12 MR. MARINO: Objection to form.

13 BY MR. PLACITELLA:

14 Q. You can answer.

15 A. It was probably in 1981.

16 Q. And what were the circumstances?

17 MR. FARRELL: Objection to
18 form.

19 THE WITNESS: The person who
20 preceded me in that position, Joe Brush,
21 was going over some of the items that
22 were of current interest. And I recall
23 him saying -- tell -- telling me --

24 MR. FARRELL: Mr. --

1 Mr. Dornbusch --

2 THE WITNESS: Yes.

3 MR. FARRELL: -- one moment.

4 When it comes to a conversation between
5 you and Mr. Brush, who, as I understand
6 it, was also a lawyer for the company --

7 THE WITNESS: Yes.

8 MR. FARRELL: -- I would
9 caution you on the disclosure of
10 information or communications that would
11 be covered by the attorney-client
12 privilege or, depending on the time
13 period, the work product doctrine.

14 So I didn't mean to interrupt
15 your answer, but it sounded like you
16 were heading in that direction. I would
17 instruct you not to answer questions or
18 to disclose information covered by
19 privilege or work product.

20 If you can continue your
21 answer without disclosing such
22 information, that's fine. But if you're
23 about to disclose the substance of a
24 communication with Mr. Brush, I'd

1 instruct you not to do so and would
2 object to the question on that basis.

3 MR. MARINO: Could I have the
4 question back, please.

5 (Whereupon, the court reporter
6 read back the record as requested.)

7 MR. PLACITELLA: The first
8 question is when is the first time that
9 you learned there were reports indicating
10 there was asbestos in Ental talc. And
11 the second -- next question was, what
12 were the circumstances.

13 MR. FARRELL: The question --

14 MR. MARINO: That -- that --
15 that question does not call for the
16 disclosure of any statements --

17 THE WITNESS: Yeah.

18 MR. MARINO: -- made to you by
19 anyone. I -- I think Mr. Farrell's
20 objection was because you began to
21 volunteer such testimony.

22 THE WITNESS: Yes, I spoke to
23 my predecessor.

24 BY MR. PLACITELLA:

1 Q. Okay. And that was information
2 already in his possession?

3 MR. FARRELL: Objection to
4 form.

5 MR. MARINO: Same objection.

6 THE WITNESS: Well, I assume it
7 was. He knew.

8 BY MR. PLACITELLA:

9 Q. Okay. When is the first time
10 that you learned there was testing data
11 concerning the asbestos content of Emtal
12 talc?

13 A. I don't recall.

14 Q. Okay. When is the first time you
15 learned there was testing data -- that
16 testing data existed indicating there was
17 asbestos in Emtal talc?

18 MR. FARRELL: Objection to
19 form; foundation.

20 THE WITNESS: I don't recall.

21 BY MR. PLACITELLA:

22 Q. Okay. When is the first time, if
23 ever, that you learned that consultants hired
24 by Engelhard found asbestos in Emtal talc?

1 MR. FARRELL: Objection to
2 form.

3 THE WITNESS: I don't recall.

4 BY MR. PLACITELLA:

5 Q. When is the first time that you
6 learned that Em -- that Engelhard scientists
7 testified under oath about the testing of
8 Emtal talc for asbestos?

9 MR. MARINO: I just object to
10 the form of the question and ask if you
11 could ask the question -- the
12 foundational question first, please.

13 BY MR. PLACITELLA:

14 Q. Can you answer my question?

15 A. I'm not sure what it was.

16 Q. Did you ever -- did you ever
17 learn that Engelhard scientists testified
18 under oath concerning the testing of Emtal
19 talc for asbestos?

20 A. Yes.

21 Q. And when was the first time you
22 learned that?

23 A. I don't know.

24 Q. Okay. Did you, at some point,

1 learn that Engelhard scientists testified
2 under oath that there were testing results
3 indicating that there was, in fact, asbestos
4 in Emtal talc?

5 MR. FARRELL: Objection to form
6 and foundation.

7 THE WITNESS: Was this a when
8 question, or did?

9 BY MR. PLACITELLA:

10 Q. Did. Did first?

11 A. What was the question, did I...

12 Q. Did there come a time when you
13 learned that Engelhard scientists testified
14 under oath that there were testing results
15 indicating that there was asbestos in Emtal
16 talc?

17 MR. FARRELL: Objection to form
18 and foundation.

19 BY MR. PLACITELLA:

20 Q. You can answer it.

21 A. I believe there -- I believe
22 there was such a time, yes.

23 Q. And when was that?

24 A. I don't recall.

1 Q. Do you not remember? Was it in
2 the early '80s, the late '80s, the '90s?

3 MR. FARRELL: Objection to
4 form.

5 BY MR. PLACITELLA:

6 Q. Do you have an estimate?

7 A. Not -- no, I don't.

8 Q. Okay. Do you know who David Hyde
9 is or was?

10 A. Yes.

11 Q. And who was he?

12 A. He was a senior partner at Cahill
13 Gordon and Reindel.

14 Q. All right. And what -- what
15 was -- did you have dealings with him in your
16 capacity as general counsel?

17 A. I did, yes.

18 Q. And what was the nature of those
19 dealings?

20 A. Well, he represented Engelhard in
21 a number of matters. And in support of the
22 litigation, I talked to him frequently.

23 Q. Okay. And do you recall when --
24 if there was a time when he supplied you with

1 a memo related to the testing of Emtal talc?

2 MR. FARRELL: Objection to
3 form.

4 MR. MARINO: Is the question
5 did he ever provide Mr. Dornbusch with --

6 MR. PLACITELLA: Right.

7 MR. MARINO: -- with such a
8 memo?

9 MR. PLACITELLA: Yeah.

10 THE WITNESS: Yes.

11 BY MR. PLACITELLA:

12 Q. Okay. And do you remember the
13 context of when and why you got that memo?

14 MR. FARRELL: Objection to
15 form.

16 THE WITNESS: No, I -- I had
17 completely forgotten until our previous
18 depositions revealed it.

19 BY MR. PLACITELLA:

20 Q. Okay. What recollection do you
21 have about getting that memo?

22 MR. FARRELL: Objection to form
23 and foundation; attorney-client privilege
24 to the extent it actually gets into the

1 substance of the memo, the substance of
2 your commun -- the question is a bit
3 broad. So if it's a circumstances or
4 subject matter answer, that's acceptable.
5 But if it gets into the content of
6 communications between you and Mr. Hyde
7 or anybody at Cahill or the substance of
8 the memo itself, I would object on
9 privilege grounds.

10 MR. MARINO: And for clarity of
11 the record, that's a continuing objection
12 and continuing direction.

13 MR. PLACITELLA: Okay.

14 THE WITNESS: My recollection
15 of the -- my earliest recollection of
16 seeing it is when you showed it to me at
17 a previous deposition in the state
18 matter.

19 BY MR. PLACITELLA:

20 Q. Okay. And do you recall that --
21 have you seen it since then?

22 A. No.

23 Q. Okay. Do you -- do you remember
24 the circumstances under which you received

1 that memo?

2 A. You mean originally?

3 Q. Yes.

4 A. No, I don't.

5 MR. PLACITELLA: Okay. Can you
6 give me P-1.

7 MR. FARRELL: While
8 Mr. Placitella is pulling that out,
9 Mr. Dornbusch, I would just remind you
10 that the deposition in the state matter
11 that you alluded to is protected by a
12 sealing order, which I think you
13 understand.

14 THE WITNESS: Uh-huh.

15 MR. FARRELL: So I just caution
16 you about speaking about the contents of
17 that deposition and the substance of it.
18 It is all under seal and cannot be
19 disclosed here, or anywhere else for that
20 matter. So I would just remind you of
21 the fact that your prior testimony is
22 covered by that sealing order.

23 MR. MARINO: Do you wish to
24 place on the record a statement

1 indicating that to the extent there is
2 any disclosure during this deposition of
3 materials that would be covered by that
4 sealing order that they should be subject
5 to the sealing order?

6 MR. FARRELL: Yes. And I -- I
7 would hope we would not even go down that
8 road and that it would be inadvertent,
9 and that was part of why I thought it
10 would be useful just to remind everybody
11 of the ground rules.

12 BY MR. PLACITELLA:

13 Q. I put in front of you what's P --
14 been marked previous -- at previous
15 depositions as Exhibit 1, which is a copy of
16 a compilation that's represented to be what
17 was attached to the memo from Mr. Hyde to
18 yourself, minus the documents that are being
19 withheld on grounds of privilege. I ask if
20 you can just look at that for a second.

21 A. Okay.

22 Q. Does any of that look familiar to
23 you?

24 A. It looks familiar as -- as what

1 you -- what I previously saw, yes.

2 Q. Okay. It was --

3 MR. TUNIS: Excuse me,
4 Mr. Dornbusch, could you keep your voice
5 up just a little bit.

6 THE WITNESS: Oh, I'm sorry.
7 Yes.

8 BY MR. PLACITELLA:

9 Q. Do you know how that memo was
10 constructed?

11 MR. FARRELL: Objection to
12 form.

13 BY MR. PLACITELLA:

14 Q. The circumstances under which it
15 was constructed?

16 A. I do not, no.

17 Q. All right. Do you know whether
18 someone from Cahill Gordon came to Engelhard
19 and looked at the records or whether the
20 records were sent to Cahill Gordon that are
21 the subject of that memo?

22 MR. FARRELL: Objection to
23 form.

24 THE WITNESS: I don't know.

1 BY MR. PLACITELLA:

2 Q. Okay. Do you know whether, when
3 you received that memo, it contained all of
4 the asbestos testing records or some of the
5 records?

6 MR. FARRELL: Objection to the
7 form.

8 THE WITNESS: I don't know.

9 BY MR. PLACITELLA:

10 Q. Okay. Do you -- do you know who
11 requested that that memo be prepared?

12 A. No.

13 Q. Was it requested by you? Do you
14 recall?

15 A. I don't recall.

16 Q. Okay. It's been represented from
17 the representative of BASF that that full
18 memo was found in your files.

19 Do you have any recollection
20 of that memo being in your files?

21 MR. MARINO: Objection to the
22 question. Can you show him what you're
23 talking about, please.

24 MR. PLACITELLA: Sure.

1 MR. FARRELL: Object to form
2 and foundation.

3 MR. PLACITELLA: Give me
4 Exhibit 13.

5 This is Exhibit 13, excerpts
6 from the deposition of Daniel Steinmetz.

7 MR. FARRELL: Do you have the
8 full testimony?

9 MR. PLACITELLA: No.

10 BY MR. PLACITELLA:

11 Q. And I'm going to refer you to
12 page 130 of the deposition.

13 A. 130?

14 Q. Yeah.

15 A. Mine -- mine just goes to
16 page 93.

17 Q. That's not good.

18 All right. Let's go to
19 page 82 then. It's the same thing.

20 On page 82, I asked a
21 corporate representative of BASF, Daniel
22 Steinmetz, about this document. And I -- and
23 I said, "That was found in -- when I say the
24 original version, the one you say you found

1 in Mr. Dornbusch's file, correct?"

2 Answer: "Yes."

3 "Do you know the source of the
4 documents that are located in the original
5 version of P-15?"

6 Answer: "And by source, you
7 mean what?"

8 "Where they got the documents
9 from."

10 Answer: "Where Cahill
11 obtained the documents?"

12 Answer: "Yes."

13 "It was put together 40 years
14 ago. I don't know exactly what the source of
15 those documents were. I might" -- "I might
16 be able to tell you whether it was an
17 original document or a copy of an original or
18 what. I just don't know in every case."

19 Do you recall that document
20 being placed in your file at any point in
21 time?

22 MR. FARRELL: Objection to form
23 and foundation.

24 THE WITNESS: No.

1 BY MR. PLACITELLA:

2 Q. Okay. If you had that document
3 in your file, where would you keep it?

4 MR. FARRELL: Objection to
5 form; foundation.

6 THE WITNESS: Well, I -- it
7 would depend. If I -- if it was
8 something that I anticipated having an
9 ongoing need to refer to it, I would keep
10 it in my office files. I probably -- I
11 might write something in the upper corner
12 to indicate to my secretary what I
13 intended to call it. Or she might. I
14 might just give it to her -- I had a very
15 capable secretary -- and tell her that
16 I'm going to need this from time to time;
17 put it some place where you can find it.

18 BY MR. PLACITELLA:

19 Q. Well, what was her name?

20 A. Her name was Terry, Terry
21 Richards.

22 Q. Okay. Now, do you know -- so you
23 -- as you sit here today, you don't have a
24 present recollection of what you did with

1 this memo when you received it; is that fair?

2 A. Correct. Yes.

3 MR. FARRELL: Objection to
4 form.

5 MR. MARINO: Objection to the
6 form of the question.

7 BY MR. PLACITELLA:

8 Q. Would that memo have been
9 transferred to BASF at the time that you
10 stopped working for Engelhard and went to
11 work for BASF?

12 MR. MARINO: Objection to
13 "would that." Is the question was it?

14 MR. FARRELL: Objection.

15 MR. PLACITELLA: You can
16 answer.

17 MR. FARRELL: Objection to form
18 and foundation.

19 THE WITNESS: I can't see any
20 reason why it wouldn't have been. I --
21 all -- all of the -- the intent was, they
22 -- they bought the company, they were
23 entitled to all of its files.

24 MR. PLACITELLA: Okay. Can you

1 give me Exhibit 203.

2 MR. MARINO: Thank you.

3 MR. FARRELL: Thank you.

4 BY MR. PLACITELLA:

5 Q. I'm giving you Exhibit 203.

6 These are your disclosures in this case for
7 what you deem to be discoverable information.

8 And in your disclosures, you list Vernon
9 Hurst, and you -- and you say that his area
10 of knowledge is tests and inspections of the
11 mine in Johnson, Vermont; asbestos tests
12 and/or studies of Engelhard/BASF talc.

13 Do you see that?

14 A. I don't see what you just quoted
15 but --

16 Q. It's on page 8.

17 A. Oh.

18 Q. And I put it up there. Just...

19 A. Oh, yes, I see, Vernon Hurst.

20 Q. Okay. Now, this was supplied to
21 us by your counsel. Who was Vernon Hurst?

22 A. Vernon Hurst was the head of the
23 department of geology at the University of
24 Georgia. In fact, I believe he founded the

1 department. And we had retained his services
2 as an expert witness in a patent litigation.
3 And so I knew -- I knew him and knew that he
4 had credentials as an expert in the area.

5 Q. Okay. And you say that he was
6 knowledgeable about tests and inspections of
7 the mine in Johnson, Vermont.

8 Did he make an inspection of
9 the Johnson, Vermont mine, to your knowledge?

10 A. Yes.

11 Q. Okay. And when was that?

12 A. I don't recall.

13 Q. Do you remember what -- what
14 decade it was? Was it the '80s, the '90s?

15 A. Not even that. I -- I really
16 don't know. I'd be guessing.

17 Q. Okay. And do you -- and it
18 further says, his -- I guess his tests and
19 inspections were about asbestos tests and/or
20 studies.

21 Do you know whether he ran any
22 tests related to the Johnson mine concerning
23 asbestos?

24 A. I don't know.

1 MR. FARRELL: Objection to --
2 objection to form. It was an, I don't
3 know?

4 MR. MARINO: If you could just
5 -- I'm sorry. If you could just leave a
6 little space after Mr. Placitella's
7 question to give counsel and --

8 THE WITNESS: Right.

9 MR. MARINO: -- myself an
10 opportunity to object.

11 THE WITNESS: Sorry.

12 MR. MARINO: It's all right.

13 THE WITNESS: I'm accustomed to
14 the previous deposition where there was
15 no privilege.

16 MR. FARRELL: Not a -- not a
17 problem.

18 BY MR. PLACITELLA:

19 Q. Okay. Do you know --

20 MR. FARRELL: And the answer
21 was "I don't know;" is that correct?

22 BY MR. PLACITELLA:

23 Q. Do you know whether Vernon Hurst
24 ever found that the Johnson mine was

1 contaminated with asbestos?

2 MR. FARRELL: Objection to
3 form; foundation; privilege; work
4 product.

5 Mr. Dornbusch, I instruct you
6 not to answer the question.

7 BY MR. PLACITELLA:

8 Q. Could you answer that question,
9 sir, but for your instruction not to answer
10 it?

11 MR. MARINO: That's an improper
12 question. He's been instructed not to
13 answer. Next question.

14 BY MR. PLACITELLA:

15 Q. Okay. Could you answer that
16 question, sir?

17 MR. MARINO: Direction not to
18 answer that question.

19 BY MR. PLACITELLA:

20 Q. Sir, you've listed Mr. Hurst as
21 somebody with discoverable information
22 concerning asbestos tests.

23 What discoverable information
24 are you referring to?

1 MR. MARINO: Mr. Dornbusch has
2 been directed not to answer the question
3 on the grounds of attorney-client
4 privilege.

5 He's now respecting that
6 direction.

7 BY MR. PLACITELLA:

8 Q. Different question. You've
9 listed in your Rule 26 disclosure the fact
10 that Vernon Hurst was knowledgeable about
11 asbestos testing.

12 What -- what was the -- what
13 was his knowledge?

14 MR. FARRELL: Objection to
15 form; foundation. Same instruction on
16 privilege and work product.

17 MR. PLACITELLA: How is it
18 privileged?

19 MR. FARRELL: You just asked
20 the witness what Vernon Hurst's knowledge
21 was regarding the testing of talc for
22 asbestos. That's the same question I
23 just instructed him to answer (sic) 30
24 seconds ago.

1 MR. PLACITELLA: How is that
2 privileged?

3 MR. FARRELL: Because he would
4 need to disclose the answer to the
5 question that I instructed him not to
6 answer.

7 MR. PLACITELLA: How is --
8 how's -- how is that? What's the basis
9 for that assertion?

10 MR. MARINO: He's being asked
11 to disclose information that exists by
12 virtue of the attorney-client
13 relationship. It's a confidential
14 relationship. You understand the
15 direction not to answer the question.

16 MR. PLACITELLA: No. I'm
17 asking Mr. Farrell what is the basis for
18 your assertion that that information is
19 privileged, given the fact that it was
20 disclosed as discoverable information by
21 Mr. Dornbusch in his Rule 26 disclosure.

22 MR. FARRELL: Well, first of
23 all, Mr. Dornbusch doesn't control this
24 privilege. BASF controls the privilege.

1 And BASF has not waived the privilege
2 over the substance of Mr. Hurst's work or
3 his communications with anybody at
4 Engelhard or Cahill regarding the
5 analysis he did.

6 So I can't speak to why
7 Mr. Dornbusch listed Mr. Hurst in his
8 initial disclosure. I can tell you he's
9 not capable of waiving that privilege.
10 He didn't waive the privilege. I've
11 asserted privilege over the substance of
12 Mr. Hurst's work and his communications
13 with Engelhard and Cahill.

14 I've instructed the witness
15 not to answer the question. So if you
16 have another question for the witness,
17 we can move to that question. But I
18 think I've addressed this issue.

19 MR. PLACITELLA: No. I want to
20 tease this out, because I need to go to
21 the Court.

22 BY MR. PLACITELLA:

23 Q. Can you show me where on your
24 privilege log Mr. Hurst is mentioned

1 anywhere, because I couldn't find it.

2 MR. FARRELL: I don't have our
3 privilege log here today, Mr. Placitella.

4 Do you have a question for
5 Mr. Dornbusch?

6 MR. PLACITELLA: No. I want to
7 flesh this out, because this is an
8 important area.

9 MR. FARRELL: I'm not here to
10 flesh it out for you, sir. I've
11 explained the basis for my privilege
12 objection.

13 MR. PLACITELLA: No, I don't
14 really --

15 MR. FARRELL: Did you have a
16 question for the witness?

17 MR. PLACITELLA: No. I have a
18 question for you. What is the basis for
19 your asserting privilege over what
20 Mr. Hurst found about asbestos in the
21 Johnson mine?

22 MR. FARRELL: I've just
23 explained it to you.

24 MR. PLACITELLA: What's that?

1 MR. FARRELL: I've just
2 explained it to you. Do you have a
3 question for the witness?

4 MR. PLACITELLA: No, you didn't
5 explain it.

6 What is the basis for your
7 privilege?

8 MR. FARRELL: I've explained it
9 to you. Do you have a question for the
10 witness. I'm not the witness. Do you
11 have a question for Mr. Dornbusch?

12 BY MR. PLACITELLA:

13 Q. Mr. Dornbusch, was Dr. Hurst --
14 he is -- it was Dr. Hurst, correct?

15 A. Yes.

16 Q. Okay. And he was one of the
17 foremost authorities in the world in this
18 area of asbestos testing and geology?

19 A. I don't know that.

20 Q. Okay.

21 A. I -- I had retained him
22 originally for something very different.

23 Q. And what was the purpose of your
24 retainer of Dr. Hurst as related to Johnson

1 mine?

2 MR. FARRELL: Objection to form
3 and foundation.

4 Are -- are you able to answer
5 that question, Mr. Dornbusch, without
6 getting into the substance of
7 communications between you and
8 Mr. Hurst -- anybody at Engelhard and
9 Mr. Hurst for that matter -- or Cahill
10 and Mr. Hurst?

11 THE WITNESS: No.

12 MR. FARRELL: Then I instruct
13 you not to answer the question on
14 privilege grounds.

15 BY MR. PLACITELLA:

16 Q. Was he retained as -- in
17 connection with litigation?

18 MR. FARRELL: Objection to form
19 and foundation.

20 THE WITNESS: I believe so.

21 BY MR. PLACITELLA:

22 Q. Okay. And when was that?

23 A. I don't recall.

24 MR. MARINO: Speak up a little

1 bit, please.

2 THE WITNESS: I don't recall.

3 MR. MARINO: Thank you.

4 BY MR. PLACITELLA:

5 Q. And do you know why --

6 MR. FARRELL: Objection to --

7 BY MR. PLACITELLA:

8 Q. -- he was retained?

9 MR. FARRELL: Objection to
10 form; foundation; privilege; work
11 product.

12 I instruct you not to answer
13 the question.

14 MR. MARINO: It's a continuing
15 instruction not to answer questions that
16 would disclose confidential
17 communications between attorney and
18 client.

19 BY MR. PLACITELLA:

20 Q. Okay. Let me just go to the
21 record. Can you go to the first page of the
22 disclosure -- actually, page 2, under
23 identity of witnesses it says, "Pursuant to
24 Rule 26(a)(1)(A)(i) of the Federal Rules of

1 Civil Procedure, subject to and without
2 waiving the limitations set forth above,
3 Dornbusch is presently aware of the
4 individuals set forth below who may have
5 discoverable information that he may use to
6 support his defenses in this lawsuit."

7 Do you see that?

8 A. I do.

9 Q. Do you know, after you submitted
10 this in this case, whether BASF ever took the
11 position before today that any of the
12 information that you were disclosing was
13 privileged?

14 MR. MARINO: Please do not
15 answer the question.

16 If you will, in drawing the
17 witness's attention to specified
18 information as you have highlighted on
19 the screen, if you could just scroll up
20 a little bit --

21 MR. PLACITELLA: Well --

22 MR. MARINO: -- and show him
23 the information that begins at the
24 paragraph immediately preceding. These

1 disclosures are made subject to the
2 reservation of all privileges and
3 protections. Dornbusch's initial
4 disclosures are made without, in any way,
5 waiving the right to object to any
6 discovery request or to the admissibility
7 of any evidence on the grounds of
8 privilege, work product, et cetera, et
9 cetera.

10 BY MR. PLACITELLA:

11 Q. Okay. My question to you was,
12 before today, were you ever notified by BASF
13 that your disclosure of Dr. Hurst implicates
14 any kind of privilege.

15 MR. FARRELL: Objection.

16 MR. MARINO: How would -- how
17 would he learn that information? Do you
18 think he is in direct contact with BASF,
19 or do you think that would have been
20 information that he would have learned
21 from counsel.

22 BY MR. PLACITELLA:

23 Q. You can answer the question.

24 MR. MARINO: He cannot answer

1 the question.

2 I direct you not to answer the
3 question.

4 MR. PLACITELLA: Okay.

5 MR. MARINO: That question
6 seeks the disclosure of information
7 between Mr. Dornbusch and myself. That
8 is a privilege that he controls. And
9 that is -- this is, based upon that
10 privilege, a direction not to answer that
11 inquiry.

12 BY MR. PLACITELLA:

13 Q. Okay. Where did the information
14 come from that you listed Vernon Hurst for on
15 page 8?

16 MR. FARRELL: Objection to form
17 and foundation.

18 Are you asking for the
19 identity of a person?

20 MR. PLACITELLA: No.

21 BY MR. PLACITELLA:

22 Q. What was the source of this? Is
23 this from your personal knowledge?

24 A. I -- I don't -- I don't know.

1 Q. Okay. Do you know why you
2 disclosed Mr. Hurst as somebody with
3 discoverable information?

4 MR. FARRELL: Objection to form
5 and foundation.

6 MR. MARINO: Again, when -- in
7 my experience, Mr. Placitella, when
8 initial disclosures are made pursuant to
9 the Federal Rules of Civil Procedure,
10 they are typically made subject to the
11 applicable privileges. Probing
12 Mr. Dornbusch with respect to the source
13 of this information threatens to invade
14 that privilege. And he's directed not to
15 answer.

16 BY MR. PLACITELLA:

17 Q. Do you have personal -- did this
18 information come from your personal
19 knowledge?

20 MR. FARRELL: Objection to form
21 and foundation.

22 MR. MARINO: Can you clarify
23 what you mean by "this information,"
24 please.

1 BY MR. PLACITELLA:

2 Q. The information listed Vernon
3 Hurst knows about testing and/or inspections
4 of the mine in Johnson, Vermont, asbestos
5 tests and/or studies of Engelhard/BASF's
6 talc.

7 MR. MARINO: Mr. Dornbusch has
8 disclosed his knowledge that Mr. Hurst
9 may be knowledgeable -- and I highlight
10 the words "may be knowledgeable" -- as to
11 tests and/or inspections of the mine in
12 Johnson, Vermont, asbestos tests and/or
13 studies of Engelhard/BASF's talc.

14 I don't want to burden the
15 record with this sort of back and forth.
16 But I think we know the purpose of Rule
17 26 disclosures. Mr. Dornbusch has
18 disclosed this information so that you
19 can take discovery with respect to
20 Mr. Hurst if you wish to do so; not so
21 that you can probe Mr. Dornbusch on
22 attorney-client privileged information.

23 BY MR. PLACITELLA:

24 Q. Do you know if Mr. Hurst --

1 Dr. Hurst is still alive?

2 A. I don't know.

3 Q. No.

4 And if Dr. Hurst is, in fact,
5 dead, the only person who would have the
6 information would be yourself, correct?

7 MR. FARRELL: Objection to form
8 and foundation.

9 MR. MARINO: Same objection.

10 THE WITNESS: I don't know that
11 either.

12 BY MR. PLACITELLA:

13 Q. Do you know whether Dr. Hurst
14 authored any reports related to the
15 inspection of the Johnson mine or asbestos
16 testing?

17 MR. FARRELL: Objection to
18 form.

19 THE WITNESS: I'm not aware of
20 any, no.

21 BY MR. PLACITELLA:

22 Q. So whatever conversations you had
23 with Dr. Hurst were verbal?

24 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: Yes.

3 BY MR. PLACITELLA:

4 Q. Okay. And do you know why
5 those -- whatever report he gave you was only
6 verbal and never reduced to writing?

7 MR. FARRELL: Objection to form
8 and foundation.

9 Do you know the answer to that
10 question, Mr. Dornbusch?

11 THE WITNESS: I don't know.
12 I'd have to speculate.

13 MR. MARINO: Do not speculate.

14 THE WITNESS: Right.

15 BY MR. PLACITELLA:

16 Q. Okay. So if Dr. Hurst is, in
17 fact, dead and he provided you information
18 concerning asbestos testing of the Johnson
19 mine, and it wasn't in writing, the only
20 person -- the only source left to get that
21 information would be from you?

22 MR. FARRELL: Objection to form
23 and foundation.

24 BY MR. PLACITELLA:

1 Q. Correct?

2 MR. FARRELL: Assumes facts.

3 THE WITNESS: I don't think
4 that's correct, no.

5 BY MR. PLACITELLA:

6 Q. What other source?

7 A. There would probably be people at
8 Cahill.

9 Q. And who would that be?

10 A. Probably Peter Sloane would know.

11 Q. Okay.

12 A. He may also have had personal
13 notes or records that would be part of his
14 files. I don't -- I don't recall.

15 Q. Okay. I'm sorry if I asked -- I
16 asked you this. I'm not sure. Do you know
17 whether he physically went to the Johnson
18 mine, Dr. Hurst?

19 A. I know, yes.

20 Q. And did he?

21 MR. FARRELL: Objection to
22 form. It's a -- just a yes or a no.

23 THE WITNESS: Yes.

24 BY MR. PLACITELLA:

1 Q. Okay. And do you know what he
2 did at the Johnson mine?

3 MR. FARRELL: Objection to form
4 and foundation.

5 Is this something that you can
6 speak to at a high level subject matter?
7 Because as soon as we get into the
8 details, it implicates the privilege.

9 THE WITNESS: Uh-huh. I don't
10 know in detail what he did, no.

11 BY MR. PLACITELLA:

12 Q. Do you know generally what he
13 did?

14 A. I don't know everything that he
15 did. I know some of the things he did,
16 but...

17 Q. Which were what?

18 A. They would be covered by the
19 privilege.

20 MR. FARRELL: Objection to form
21 and --

22 MR. MARINO: Hold on a second,
23 please.

24 MR. FARRELL: The witness has

1 indicated the answer would be covered by
2 privilege, so I instruct him not to
3 answer the question further.

4 BY MR. PLACITELLA:

5 Q. Do you know whether he went to
6 the Johnson mine with anybody but himself?

7 A. I don't know.

8 Q. Do you know whether he interacted
9 with anybody at the Johnson mine when he was
10 there?

11 A. I don't know.

12 Q. When he returned from the Johnson
13 mine, he provided you with a report; is that
14 fair?

15 MR. FARRELL: Objection to
16 form.

17 MR. MARINO: You're asking him
18 for a yes or no --

19 MR. PLACITELLA: Yeah.

20 MR. MARINO: -- response?

21 THE WITNESS: Yes.

22 MR. MARINO: Okay.

23 THE WITNESS: Yes.

24 BY MR. PLACITELLA:

1 Q. Was any of the information that
2 you obtained from Dr. Hurst used in the
3 defense of an Emtal talc litigation?

4 MR. FARRELL: Objection to form
5 and foundation.

6 It's a yes or a no, I think,
7 Mr. Dornbusch.

8 THE WITNESS: I actually don't
9 know.

10 BY MR. PLACITELLA:

11 Q. Who would know that?

12 MR. FARRELL: Objection to
13 form; foundation.

14 THE WITNESS: The people
15 responsible for the defense of the talc
16 litigations.

17 BY MR. PLACITELLA:

18 Q. And who would that be?

19 A. The people at Cahill Gordon.

20 Q. Okay. Is it your belief that
21 Dr. Hurst also provided reports to people at
22 Cahill Gordon?

23 MR. FARRELL: Objection to
24 form.

1 THE WITNESS: Yes.

2 BY MR. PLACITELLA:

3 Q. Okay. And what's the basis for
4 that belief?

5 MR. FARRELL: Objection to
6 form.

7 THE WITNESS: Cahill was the
8 counsel coordinating our defense against
9 talc litigation in general. And this
10 would have been certainly part of the
11 overall facts regarding talc that they
12 would have needed to know.

13 BY MR. PLACITELLA:

14 Q. And do you understand that part
15 of the defense that was being asserted by
16 Cahill Gordon was that there was no evidence
17 of asbestos contamination in the Johnson
18 mine?

19 MR. FARRELL: Objection to
20 form.

21 MR. BOISE: Objection to form.

22 MR. FARRELL: Objection to form
23 and foundation.

24 MR. MARINO: Also, can you --

1 can you put a time frame into the
2 question, please.

3 MR. PLACITELLA: At any point
4 in time.

5 MR. FARRELL: Same objections.

6 THE WITNESS: No, I did not.

7 BY MR. PLACITELLA:

8 Q. You never knew that?

9 A. I -- if I did, I've since
10 forgotten. I don't recall --

11 Q. Is the information --

12 A. -- all of that.

13 Q. -- obtained from Dr. Hurst
14 consistent with a position that there was no
15 evidence of asbestos contamination in the
16 Johnson mine?

17 MR. FARRELL: Objection to
18 form; foundation; privilege; work
19 product. I instruct him not to answer
20 the question.

21 BY MR. PLACITELLA:

22 Q. If Dr. Hurst provided you
23 information that was inconsistent with the
24 positions that were being asserted by your

1 counsel, do you believe you had an obligation
2 to reveal that information?

3 MR. MARINO: Objection to the
4 form of the question.

5 MR. FARRELL: Objection to
6 form; foundation.

7 The -- you're asking him a
8 hypothetical about this?

9 MR. PLACITELLA: Yes, sir.

10 MR. FARRELL: Can you answer
11 the question, Mr. Dornbusch, without
12 implicating the content of Mr. Hurst --
13 Dr. Hurst's testing or any communications
14 between you and Cahill or other lawyers
15 for Engelhard in connection with the talc
16 litigation?

17 MR. MARINO: And without
18 speculating, if I may add that.

19 MR. FARRELL: Yeah, in my
20 question.

21 THE WITNESS: No.

22 MR. FARRELL: Then I instruct
23 you not to answer the question on
24 privilege grounds.

1 BY MR. PLACITELLA:

2 Q. So is it your understanding that
3 if Dr. Hurst provided you information that
4 was inconsistent with the position that you
5 were taking factually in litigation, that you
6 had no duty to disclose that?

7 MR. MARINO: The -- the
8 question has been -- the -- you -- you
9 understand that Mr. Dornbusch, in his
10 capacity as the general counsel of
11 Engelhard, is now asserting a privilege
12 at the direction of Engelhard's successor
13 in interest. You've asked the same
14 question that he's been directed not to
15 answer.

16 MR. PLACITELLA: I don't think
17 so. Can you answer that question?

18 MR. FARRELL: It was the same
19 question I had just instructed the
20 witness not to answer.

21 MR. PLACITELLA: That's fine.

22 BY MR. PLACITELLA:

23 Q. Do you know who Georgia Tech was?

24 A. The institution, yes.

1 Q. Okay. Do you know whether they
2 ever did any work for Engelhard concerning
3 the testing of Emtal talc?

4 A. I don't know.

5 Q. Okay. What was your first
6 involvement that you can recall with lawsuits
7 related to the talc at the Johnson mine?

8 MR. FARRELL: Objection to
9 form.

10 THE WITNESS: I'm not sure if
11 it was the first or not. But I was
12 aware -- the earliest recollection I have
13 today is of litigation in Rhode Island.

14 BY MR. PLACITELLA:

15 Q. Okay. And when was that?

16 A. That was pretty early on.
17 Probably in the '80s, mid -- early or mid
18 '80s.

19 Q. And were there cases -- do you
20 remember that being called the Westfall case?

21 A. I think that's right, yes.

22 Q. You filed Affidavits in that
23 case?

24 A. I don't know.

1 Q. Okay. And do you recall whether
2 there were cases filed against Engelhard
3 related to talc prior to Westfall?

4 MR. FARRELL: Objection to
5 form; foundation.

6 THE WITNESS: I do not recall.

7 BY MR. PLACITELLA:

8 Q. Okay. Do you know whether there
9 was ever any Workers' Compensation claims
10 related to talc filed against Engelhard?

11 MR. FARRELL: Objection to
12 form.

13 THE WITNESS: I don't know.

14 MR. PLACITELLA: Okay. Can you
15 give me 214 and 215.

16 BY MR. PLACITELLA:

17 Q. You have in front of you what's
18 been marked P-214, the first page is -- says
19 Engelhard Corporation, William Salling. Do
20 you see that?

21 A. Yes.

22 Q. Okay. And if you go to the third
23 page --

24 MR. TUNIS: Excuse me, Chris,

1 do you intend to show it on the screen?

2 MR. PLACITELLA: Oh, I'm sorry.

3 BY MR. PLACITELLA:

4 Q. The third page -- I'll just do it
5 this way. There's a letter to a Mr. Lockman,
6 from the Royal Insurance Company dated
7 July 15th, 1985. Do you see that?

8 A. I do.

9 Q. Do you know -- do -- what was the
10 relationship between the Royal Insurance
11 Company and Engelhard in 1985, if you know?

12 MR. FARRELL: Objection to
13 form.

14 THE WITNESS: I -- I do not
15 know.

16 BY MR. PLACITELLA:

17 Q. Okay. Do you see where it says,
18 Re: File number, various versus Engelhard
19 Minerals and Chemical Corp.?

20 A. Yes.

21 Q. Okay. Do you know who
22 Mr. Lockman was?

23 A. No.

24 Q. Okay. Do you recall a

1 relationship with Alexander and Alexander and
2 Engelhard while you were at Engelhard?

3 A. No.

4 Q. Okay. This letter -- do you know
5 who H.A. Rhule is, who authored the letter?

6 A. No.

7 Q. Okay. Here it says, Attached is
8 a copy of my April 1, 1985, letter to you. I
9 attach also a copy of April 11, 1985, letter
10 from Kenneth Brockman of Alexander and
11 Alexander. Your company was primary either
12 for the entire period of coverage under our
13 umbrella or your shared -- or you shared that
14 coverage with Aetna. I will write to them
15 for information about their coverage.

16 It says, Please advise on what
17 coverage is afforded by Royal Insurance
18 Company to Engelhard and also what action you
19 have taken to defend the insured. The
20 plaintiff's names are Leroy Kangas, Walter B.
21 Smith --

22 MR. MARINO: Weldon B. Smith.

23 BY MR. PLACITELLA:

24 Q. -- Weldon B. Smith, and William

1 L. Salling.

2 Do you see that?

3 A. I do.

4 Q. A reference is made that Eastern
5 Magnesium Talc Company is a subsidiary of
6 Engelhard.

7 Do you see that?

8 A. Yes.

9 Q. All right. Does that refresh
10 your memory as to whether you were involved
11 in litigation involving Engelhard and talc
12 other than the Westfall case in the early
13 1980s?

14 MR. MARINO: You're asking if
15 this refreshes his recollection of that?

16 MR. PLACITELLA: Yeah.

17 MR. FARRELL: Objection to form
18 and foundation.

19 MR. MARINO: You may answer the
20 question.

21 THE WITNESS: No.

22 BY MR. PLACITELLA:

23 Q. Okay. And can you go to -- I'll
24 put it up here -- the page that's -- that's

1 entitled May 20th, 1985.

2 MR. FARRELL: Which Bates page
3 is that, Chris?

4 BY MR. PLACITELLA:

5 Q. It's -- okay. It's 49428. This
6 one says, Dear Bob: Please refer to the
7 subject litigation. We've recently received
8 the request from one of the excess carriers
9 relevant to the status of the subject matter.
10 You will note that the matter was being
11 coordinated by the insured's counsel, Cahill
12 Gordon & Reindel, with -- and then it gives
13 you the address. And it says, We believe
14 Mr. Howard G. Sloane is the person familiar
15 with this litigation.

16 Do you see that?

17 A. Yes.

18 Q. Is that the Howard Sloane that
19 was in charge of the Engelhard litigation in
20 the early 1980s that you testified about?

21 MR. FARRELL: Objection to
22 form.

23 MR. TUNIS: Objection to form.

24 MR. MARINO: When you ask him,

1 is that the Howard Sloane --

2 MR. PLACITELLA: Yeah.

3 MR. MARINO: -- could -- could

4 I ask you to observe the convention, when

5 refreshing one's recollection with a

6 document, which is to show that person

7 the document, to ask him to review the

8 document, and then to ask him if it

9 refreshes his recollection, rather than

10 simply reading the document into the

11 record before we've established whether

12 it does, in fact, refresh his

13 recollection.

14 BY MR. PLACITELLA:

15 Q. Is that the Howard -- the same

16 Howard Sloane that you testified to before?

17 MR. MARINO: You're asking if

18 Mr. Brockman is referring to the same

19 Howard Sloane? You're asking

20 Mr. Dornbusch if Mr. Brockman is

21 referring to the same Howard Sloane

22 Mr. Dornbusch referred to?

23 MR. PLACITELLA: You can

24 answer.

1 MR. FARRELL: Objection to form
2 and foundation.

3 MR. MARINO: Same objection.

4 THE WITNESS: I don't know who
5 Mr. Brockman is -- is referring to. I
6 know a Howard G. Sloane, we called him
7 Peter, at Cahill Gordon, who was
8 generally involved in defending Engelhard
9 from -- in talc litigation.

10 MR. PLACITELLA: Okay. Give me
11 215.

12 MR. MARINO: Thank you.

13 BY MR. PLACITELLA:

14 Q. I'm going to show you what's been
15 marked 215. It's Bates No. 50872.

16 MR. BOISE: Prefix Arrowood?

17 MR. PLACITELLA: Yeah.

18 BY MR. PLACITELLA:

19 Q. It's a January 24, 1985 letter
20 from Harriet Vasilopoulos.

21 Do you know who she is?

22 A. No.

23 Q. To Nancy Remundo.

24 Do you know who she was?

1 A. No.

2 Q. Okay. And it's cc Paulette
3 Bynoe.

4 Do you see that?

5 A. Yes.

6 Q. Do you know who -- who she was?

7 A. No.

8 Q. What about Jesse Pagonis?

9 A. Jesse Pagonis was the Engelhard
10 employee who was responsible for risk
11 management.

12 Q. So when a claim came in, that was
13 under his purview?

14 A. Yeah. He --

15 MR. FARRELL: Objection to
16 form.

17 THE WITNESS: Yeah. He -- he
18 was responsible for all coordination with
19 the insurance carriers.

20 BY MR. PLACITELLA:

21 Q. Okay. And specifically, what was
22 his day-to-day responsibilities?

23 A. I'm not sure. He was responsible
24 to have an appropriate level of insurance in

1 effect for the company.

2 Q. When a claim was -- when a case
3 was filed related to the Emtal talc
4 litigation, would he receive notice of that?

5 A. Yes.

6 MR. FARRELL: Objection to
7 form.

8 BY MR. PLACITELLA:

9 Q. And would he then communicate
10 that to the insurance carrier as part of his
11 job?

12 A. I -- I --

13 MR. FARRELL: Objection to
14 form.

15 THE WITNESS: -- I don't know.

16 BY MR. PLACITELLA:

17 Q. Do you know whether it was his
18 responsibility to communicate all lawsuits to
19 the insurance carrier related to Emtal talc?

20 MR. FARRELL: Objection to
21 form.

22 THE WITNESS: I would think so.
23 I don't know.

24 BY MR. PLACITELLA:

1 Q. Now, do you see the -- the next
2 page, I've highlighted the third and fourth
3 names down. Leroy Kangas and Willia Salling.

4 Do you see that?

5 A. I do.

6 Q. Okay. Do you see where it talks
7 about ACC year all the way at the -- at the
8 end? Do you see the column, ACC --

9 A. Oh.

10 Q. -- YR? I'm sorry.

11 A. Yes. Yes.

12 Q. Okay. Do you know what that
13 stands for?

14 A. No.

15 Q. Is that something we'd have to
16 ask Jesse Pagonis?

17 MR. FARRELL: Objection to form
18 and foundation.

19 THE WITNESS: He -- he would
20 know more than I do on how to read this.

21 BY MR. PLACITELLA:

22 Q. Okay. Do you know whether the
23 findings of Dr. Hurst were ever communicated
24 to Jesse Pagonis?

1 MR. FARRELL: Objection to form
2 and foundation.

3 THE WITNESS: I do not know.

4 BY MR. PLACITELLA:

5 Q. Should they have been in a normal
6 course of business?

7 MR. FARRELL: Objection to form
8 and foundation.

9 THE WITNESS: I'm -- I'm not
10 sure.

11 BY MR. PLACITELLA:

12 Q. Do you know whether the findings
13 of Dr. Hurst were ever communicated to
14 Engelhard's insurance carrier?

15 MR. FARRELL: Objection to form
16 and foundation.

17 THE WITNESS: I do not know.

18 BY MR. PLACITELLA:

19 Q. Should they have been in the
20 normal course of business?

21 MR. FARRELL: Same objections.

22 THE WITNESS: I don't know.

23 MR. PLACITELLA: Okay. Give me
24 Dornbusch-2.

1 BY MR. PLACITELLA:

2 Q. I'm going to show you what's been
3 marked -- pre-marked as Dornbusch-2. I
4 represent to you these are excerpts from the
5 BASF privilege log in this case. And I want
6 to just ask you some questions about that.
7 And if you can go to page --

8 MR. FARRELL: This is -- this
9 is something you made, Chris?

10 MR. PLACITELLA: Yes. I culled
11 it and made it.

12 BY MR. PLACITELLA:

13 Q. -- page 11. Oh, sorry. Page 11,
14 the entry --

15 MR. BOISE: Chris, is this -- I
16 don't have a copy of this. Is this
17 page 11 of the log or page 11 of your
18 culling?

19 MR. PLACITELLA: The culling,
20 right. What we did is we just sifted for
21 names, okay. But it's all the original
22 information.

23 MR. COREN: Actually, it's
24 page 1 of the exhibit. The numbers on

1 the bottom all say 11.

2 MR. TUNIS: I'm sorry, it's
3 page 1 of.

4 MR. COREN: It's actually the
5 first page of the exhibit.

6 MR. MARINO: These are not
7 numbered pages.

8 MR. PLACITELLA: Correct.

9 MR. MARINO: I mean, they're
10 all -- they all are numbered 11.

11 MR. PLACITELLA: Well, that's
12 not good. So blame -- blame Mr. Coren.

13 MR. BOISE: You.

14 BY MR. PLACITELLA:

15 Q. So you see where it says
16 privilege number 873?

17 MR. MARINO: We'll make a note
18 of that.

19 MR. PLACITELLA: 873. He gave
20 me a --

21 MR. COREN: I actually sent him
22 the replacement that has the -- has the
23 data.

24 BY MR. PLACITELLA:

1 Q. Do you want me to find it for
2 you?

3 A. No. I found it.

4 Q. Okay.

5 MR. FARRELL: So where -- where
6 are we then?

7 BY MR. PLACITELLA:

8 Q. Where it says privilege 873,
9 4/30/1984.

10 Do you see that?

11 A. I do, yes.

12 Q. And that's an exchange between --

13 MR. FARRELL: One -- one
14 moment, please. Would you give me the
15 priv entry again, please.

16 MR. PLACITELLA: 873.

17 MR. FARRELL: Are they -- are
18 these sorted by priv numbers?

19 MR. COREN: No. They're sorted
20 by date.

21 MR. BOYLE: It's 4/30/84.

22 MR. COREN: It's a tad easier
23 to read them and make sense of them.

24 MR. FARRELL: Okay. Thank you.

1 BY MR. PLACITELLA:

2 Q. This is an entry reflecting a
3 communication between Mr. Sloane, yourself,
4 and Mr. Halket.

5 Do you see that?

6 A. Yes.

7 Q. And it says, memo and attachment
8 relating to status report regarding Schwartz
9 litigation?

10 MR. MARINO: Transmitting
11 status.

12 BY MR. PLACITELLA:

13 Q. Transmitting. Do you see that?

14 A. Yes.

15 MR. MARINO: Regarding Schwartz
16 litigation.

17 BY MR. PLACITELLA:

18 Q. What's a status report, if you
19 know?

20 MR. FARRELL: Objection to
21 form.

22 THE WITNESS: A status report
23 would be a memorandum or a document of
24 some sort containing the current status

1 of some matter.

2 BY MR. PLACITELLA:

3 Q. So can we glean from this entry
4 that as of April 30th, 1984, there was a case
5 pending relate -- called Swartz?

6 MR. FARRELL: Objection to
7 form.

8 THE WITNESS: It -- it would
9 appear that way.

10 BY MR. PLACITELLA:

11 Q. Okay. And underneath that, with
12 privilege entry 1516, there is an -- it
13 represents an exchange between yourself and
14 an L. Friedman. Who's L. Friedman?

15 MR. FARRELL: I think that's a
16 J. Friedman.

17 THE WITNESS: Yeah, I think --

18 MR. PLACITELLA: A J. Friedman.

19 THE WITNESS: I think it looks
20 like a J. But I don't recall any
21 Friedman.

22 BY MR. PLACITELLA:

23 Q. Okay. And it talks about
24 Dynatron/Bondo talc litigation.

1 Do you see that?

2 A. Yes.

3 Q. Were you involved in litigation,
4 to your recollection, in 1984 with Dynatron
5 corporation over the product Bondo?

6 MR. FARRELL: Objection to form
7 and foundation.

8 THE WITNESS: I have no
9 recollection of that.

10 BY MR. PLACITELLA:

11 Q. Does that appear to represent to
12 you that there were cases pending in 1984
13 related to the Dynatron Bondo talc
14 litigation?

15 MR. MARINO: Objection to the
16 form of the question.

17 MR. FARRELL: Objection.
18 Objection to form and foundation; calls
19 for speculation.

20 THE WITNESS: I mean, that --
21 all I can do is read what's here. It --

22 MR. MARINO: Right.

23 THE WITNESS: It says, Letter
24 regarding Dynatron/Bondo talc

1 litigations.

2 BY MR. PLACITELLA:

3 Q. Right.

4 That wasn't the Westfall case,
5 correct?

6 MR. FARRELL: Objection to form
7 and foundation.

8 THE WITNESS: I don't know.

9 BY MR. PLACITELLA:

10 Q. Can you go down to entry 1561.

11 MR. TUNIS: Chris, if you could
12 put it back on the screen.

13 MR. PLACITELLA: Uh-huh. It's
14 up.

15 THE WITNESS: Yes.

16 BY MR. PLACITELLA:

17 Q. Do you see where it says
18 12/13/1985?

19 A. Yes.

20 Q. Okay. See where it says, Letter
21 containing attorney-client communications
22 regarding Smith versus Emtal litigation?

23 A. Yes.

24 Q. Does that indicate to you there

1 was a case pending in 1985 called Smith?

2 MR. FARRELL: Objection to form
3 and foundation.

4 THE WITNESS: It would -- would
5 appear to do that, yes.

6 BY MR. PLACITELLA:

7 Q. And there was an exchange
8 concerning the Smith case between yourself
9 and Mr. Sloane, according to this, in
10 December 1985, correct?

11 MR. FARRELL: Objection to form
12 and foundation.

13 MR. MARINO: That's what the
14 privilege log says.

15 BY MR. PLACITELLA:

16 Q. Right?

17 A. That's what it says, yes.

18 Q. Okay. And if a representation
19 was -- do you know when the Westfall case
20 settled?

21 A. I don't know.

22 Q. Okay. Assume that's -- that it
23 settled in late 1983. Okay?

24 A. Okay.

1 Q. Does that entry indicate to you
2 that there was a case that was pending after
3 the Westfall case settled before 1987?

4 A. No.

5 MR. FARRELL: Objection to form
6 and foundation; calls for speculation.

7 MR. MARINO: I join in those
8 objections; and, in fact, to the entire
9 line of questioning about this. You're
10 just showing Mr. Dornbusch a privilege
11 log and reading him entries from the
12 privilege log.

13 THE WITNESS: Well, all I can
14 say is what's on the piece of paper. It
15 has a date, 12/13/85, and it refers to
16 litigation Smith versus Emtal.

17 BY MR. PLACITELLA:

18 Q. Okay. Now, in terms of your
19 responsibilities for the Emtal litigation,
20 were you in -- were you in charge of
21 overseeing and managing the litigation?

22 MR. FARRELL: Objection to
23 form.

24 THE WITNESS: I had delegated

1 that responsibility to Cahill Gordon. I
2 was the company contact. I mean
3 eventually, I would -- ultimately, I
4 would receive reports from them on an
5 exception basis or I might ask for a -- a
6 routine report or an update. But I
7 wouldn't say that I was directly involved
8 in supervising the litigation.

9 BY MR. PLACITELLA:

10 Q. What -- when you say routine
11 report, what do you mean by that?

12 MR. FARRELL: Objection to
13 form.

14 THE WITNESS: Well, once -- I
15 don't know, maybe several times a year, I
16 might ask for an updated status report.

17 BY MR. PLACITELLA:

18 Q. Okay. And what would be the
19 subject of a status report? What would be
20 included, without divulging any privileged
21 communications?

22 A. Well, how many cases there were,
23 where they were, what the status -- how far
24 advanced they were, whether there had been

1 any settlements made, that sort of thing.

2 Q. And did Cahill Gordon keep a
3 running account of that kind of information?
4 Do you know?

5 MR. FARRELL: Objection to
6 form.

7 THE WITNESS: I don't know what
8 they kept. They were generally on top of
9 all that.

10 BY MR. PLACITELLA:

11 Q. Okay. So if you asked them at
12 any point in time, for example, tell -- tell
13 me how many cases settled and for what, they
14 would be able to tell you that?

15 MR. FARRELL: Objection to form
16 and foundation.

17 THE WITNESS: They might have
18 to do a little work, but -- to pull it
19 together, but yes.

20 BY MR. PLACITELLA:

21 Q. Okay. So -- and who would be the
22 person in charge at Cahill Gordon who would
23 assemble that kind of information for you?

24 MR. FARRELL: Objection to

1 form.

2 THE WITNESS: Well, I would
3 direct my request, probably, to Peter
4 Sloane.

5 MR. PLACITELLA: Okay.

6 THE WITNESS: But there was a
7 paralegal who was -- did a lot of that
8 sort of routine handling of data who
9 would probably have actually done the
10 work.

11 BY MR. PLACITELLA:

12 Q. Is that Michael Sullivan?

13 A. Yes.

14 Q. Okay. And would you, in your
15 reports, also receive information on cases
16 that were dismissed and the reason for
17 dismissals?

18 MR. FARRELL: Objection to
19 form; foundation.

20 THE WITNESS: Yes.

21 BY MR. PLACITELLA:

22 Q. Okay. And is that the kind of
23 information that Cahill Gordon would keep
24 record of --

1 MR. FARRELL: Objection.

2 BY MR. PLACITELLA:

3 Q. -- and that you could access if
4 you needed it?

5 MR. FARRELL: Objection to form
6 and foundation.

7 THE WITNESS: Yes.

8 BY MR. PLACITELLA:

9 Q. Okay. Now, when you received
10 these status reports, what was done with them
11 physically after you read them?

12 MR. FARRELL: Objection to
13 form.

14 THE WITNESS: I'm not -- not
15 sure. I imagine I filed them.

16 BY MR. PLACITELLA:

17 Q. Okay. And where would you file
18 them?

19 A. I'd give them to my secretary and
20 she probably had a file called talc
21 litigation status reports, something like
22 that.

23 Q. Okay. And I'm sorry if you told
24 me this, but how often would you get them?

1 MR. FARRELL: Objection to
2 form.

3 THE WITNESS: Probably two,
4 maybe three times a year.

5 BY MR. PLACITELLA:

6 Q. Okay. Would Engelhard keep its
7 own record of the cases that were settled or
8 dismissed?

9 MR. FARRELL: Objection to
10 form.

11 THE WITNESS: I don't think so.

12 MR. PLACITELLA: Okay.

13 MR. MARINO: Chris, we've been
14 going a little bit more than an hour. Do
15 you think Mr. Dornbusch might have a
16 five-minute break?

17 MR. PLACITELLA: Absolutely.
18 Any time you want.

19 MR. MARINO: Thank you very
20 much.

21 MR. PLACITELLA: Any time you
22 want.

23 MR. MARINO: Thank you.

24 THE VIDEOGRAPHER: The time is

1 now 10:12 a.m. We're going off the
2 record.

3 (Whereupon, there was a
4 discussion held off the record.)

5 (Whereupon, a brief recess was
6 taken.)

7 THE VIDEOGRAPHER: The time is
8 now 10:20 a.m. We are back on the
9 record.

10 BY MR. PLACITELLA:

11 Q. Do you have a general
12 recollection of other cases in addition to
13 Westfall being -- pending around that time?

14 MR. FARRELL: Objection to
15 form; foundation.

16 THE WITNESS: No, not really.

17 BY MR. PLACITELLA:

18 Q. Okay. And other than receiving
19 status reports from Cahill, what other
20 interaction did you have with Cahill related
21 to the Emtal litigation generally?

22 MR. FARRELL: Objection to
23 form. I think Mr. Dornbusch should just
24 be limited to category subject matter,

1 something high level, while preserving
2 any applicable privileges.

3 THE WITNESS: Uh-huh. Nothing
4 specific. Cahill Gordon represented us
5 in a number of matters. And with
6 litigation, it would be the same team of
7 lawyers, so it was not uncommon for me to
8 have a meeting with somebody like Peter
9 Sloane and go over everything they were
10 doing for us at that time.

11 BY MR. PLACITELLA:

12 Q. Okay. In the context of the talc
13 litigation, would you receive copies of
14 depositions of Engelhard executives when they
15 were deposed --

16 MR. FARRELL: Objection to
17 form.

18 BY MR. PLACITELLA:

19 Q. -- as a matter of course?

20 A. Either I would or -- or someone
21 on my staff would.

22 Q. Okay. And would you receive
23 copies of Engelhard -- signed deposition of
24 copies -- strike that.

1 Would you receive copies of
2 depositions of Engelhard scientists who were
3 deposed?

4 MR. FARRELL: Objection to
5 form.

6 THE WITNESS: Someone at
7 Engelhard would, yes.

8 BY MR. PLACITELLA:

9 Q. Okay. I want to just ask you
10 some questions about the lawyers at -- in the
11 legal department who worked on the talc
12 litigation. Were there lawyers that worked
13 under you at some point that were assigned to
14 the Emtal talc litigation at Engelhard?

15 A. Well, not to the litigation per
16 se, but to the general talc business. I know
17 Tom Halket was involved. I don't know if
18 anyone -- if there was someone before or
19 after Tom. But I know Tom -- Tom was
20 involved.

21 Q. And what were -- as it related to
22 the talc litigation, what were his
23 responsibilities?

24 A. Well, to ensure that Cahill had

1 everything they needed from us to conduct the
2 defense and to -- well, that was basically
3 it, make sure that they didn't -- if -- if
4 they needed anything, that they got it.

5 Q. Did he attend depositions?

6 MR. FARRELL: Objection to
7 form.

8 THE WITNESS: I think he did.

9 BY MR. PLACITELLA:

10 Q. Okay. And do you remember
11 when -- at what point in time Tom Halket left
12 Engelhard?

13 A. I -- I remember that it was early
14 in January of some year. Which year, I don't
15 know. But the reason I remember, we -- there
16 was a discussion about his bonus for the
17 previous year.

18 Q. Did you give him a good one?

19 You don't have to answer that.

20 A. No. We gave him whatever we
21 would have given him. He worked for the full
22 year.

23 Q. Okay. And who is Lester Fliegel?

24 A. Les was an associate general

1 counsel under me. He was probably -- I think
2 he was the most senior lawyer, other than
3 myself, in the legal department.

4 Q. And did he work on the Emtal talc
5 litigation?

6 A. Not to my recollection.

7 Q. Okay. Do you know whether Tom
8 Halket, when he worked at Engelhard, was
9 aware of the findings of Dr. Hurst?

10 MR. FARRELL: Objection to
11 form.

12 THE WITNESS: I don't know.

13 BY MR. PLACITELLA:

14 Q. Okay. What about a Mr. Hassett,
15 do you recall him?

16 A. Oh, yes.

17 Q. Okay. And did he work on the
18 talc litigations?

19 A. I don't think so.

20 Q. Okay. Was there a paralegal who
21 was assigned to the talc litigation inside of
22 Engelhard?

23 A. No.

24 Q. Who was physically in charge of

1 the talc litigation files at Engelhard?

2 MR. FARRELL: Objection to
3 form; foundation.

4 THE WITNESS: Well, it assumes
5 that there were talc litigations files as
6 such. Halket would have kept his own
7 files related to the business. I would
8 have done the same. At -- at some point,
9 as it became more and more dated, those
10 files would have gone to off-site
11 storage.

12 BY MR. PLACITELLA:

13 Q. So let's assume, for example, a
14 deposition is transferred from Cahill to
15 your -- your offices -- and when I say your
16 offices, I mean the legal department at
17 Engelhard --

18 A. Uh-huh.

19 Q. -- what typically would be done
20 with that deposition?

21 MR. TUNIS: Objection to form.

22 MR. FARRELL: Objection to form
23 and foundation.

24 THE WITNESS: Well, I can tell

1 you what I would do. I don't know -- I
2 imagine what Tom would do would have been
3 very similar. I just put it in a file,
4 labeled Hemstock deposition or whoever it
5 was. And it would be a subfile of the
6 Emtal talc litigation.

7 BY MR. PLACITELLA:

8 Q. Okay. And where would that be
9 physically located?

10 A. It would have been in the -- the
11 legal department for a time. And as it got
12 older, it would have gone to off-site
13 storage.

14 Q. Okay. And where in the legal
15 department physically?

16 MR. FARRELL: Objection to
17 form.

18 THE WITNESS: Well, my office
19 was on the tenth floor of the building.
20 I shared a file room with the HR people.
21 And it would have been in there, in our
22 files. In the legal department, they had
23 their own files in the wall, you know,
24 lining the halls.

1 BY MR. PLACITELLA:

2 Q. Okay. I want to talk to you a
3 little bit about the responsibilities of
4 Cahill.

5 Now, you hired them as
6 national counsel; is that fair?

7 A. I don't think I used that title,
8 but yes.

9 Q. Okay.

10 A. I mean, that's the role they
11 played.

12 Q. And what was their -- what were
13 their responsibilities generally as national
14 counsel in the Emtal talc litigation?

15 MR. FARRELL: Objection to
16 form.

17 THE WITNESS: Well, to
18 coordinate our defense in cases that came
19 up, wherever -- wherever they came up in
20 different states.

21 BY MR. PLACITELLA:

22 Q. If discovery responses were
23 prepared in a particular case, would they be
24 reviewed by in-house legal department, excuse

1 me, at Engelhard before they went out?

2 MR. FARRELL: Objection to
3 form; foundation.

4 THE WITNESS: Probably not.
5 Not in the latter stages, when it be --
6 at the point where it became fairly
7 routine, I would think not.

8 BY MR. PLACITELLA:

9 Q. So at what point was that, where
10 it became fairly routine?

11 A. When there --

12 MR. FARRELL: Objection to form
13 and foundation.

14 THE WITNESS: Yeah. I'm sorry.
15 When there were more than just a handful.

16 BY MR. PLACITELLA:

17 Q. So at that point, if some -- if
18 Answers to Interrogatories were prepared, for
19 example, in a case, they would not be
20 reviewed by any -- how -- anyone in-house, in
21 the in-house legal department? Is that what
22 you're saying?

23 MR. FARRELL: Objection to form
24 and foundation.

1 THE WITNESS: Not unless there
2 was something that was unique about them.

3 BY MR. PLACITELLA:

4 Q. Okay. And who developed the
5 defense strategy for the Emtal talc
6 litigation?

7 MR. FARRELL: Objection to
8 form.

9 THE WITNESS: Well, to the
10 extent that there was an overall
11 strategy, I guess you would say it
12 would -- would have been me, working in
13 conjunction with Cahill.

14 BY MR. PLACITELLA:

15 Q. Okay. And who made the selection
16 of local counsel to work on the Emtal talc
17 litigation?

18 A. Cahill Gordon.

19 Q. Okay.

20 A. With -- with my blessing.

21 Q. Okay. Was local counsel able to
22 take a position in litigation about facts --
23 factual information without your approval?

24 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: Yes.

3 BY MR. PLACITELLA:

4 Q. Were they able to take a position
5 in litigation concerning factual information
6 without approval from Cahill Gordon?

7 MR. FARRELL: Same objections.

8 THE WITNESS: I would think
9 not.

10 MR. PLACITELLA: Okay.

11 THE WITNESS: I hope not.

12 BY MR. PLACITELLA:

13 Q. Did you authorize Cahill Gordon
14 to send letters to plaintiffs' counsel
15 related to the Emtal talc litigation?

16 MR. FARRELL: Objection to form
17 and foundation.

18 MR. MARINO: Are you asking as
19 a general matter?

20 MR. PLACITELLA: Yes.

21 THE WITNESS: In general, I
22 would consider that part of defending the
23 company, yes.

24 BY MR. PLACITELLA:

1 Q. Okay. Would you authorize, in
2 general, letters sent by Cahill Gordon,
3 making representation concerning the
4 availability of evidence in the Emtal talc
5 litigation?

6 MR. FARRELL: Objection to form
7 and foundation.

8 THE WITNESS: Only as part of
9 their general representation of the
10 company.

11 BY MR. PLACITELLA:

12 Q. Okay. Would they make you aware
13 of representations they were making
14 concerning the availability of evidence in
15 the Emtal talc litigation?

16 MR. FARRELL: Same objections.
17 Can I have the question,
18 please.

19 (Whereupon, the court reporter
20 read back the record as requested.)

21 MR. FARRELL: This is just a
22 generic subject-matter-type question,
23 Mr. Dornbusch, not anything specific or
24 specific communications.

1 THE WITNESS: Uh-huh. Probably
2 not, unless there was something unique.

3 BY MR. PLACITELLA:

4 Q. When you say "unique," what do
5 you mean by that?

6 A. Something different, something
7 out of the ordinary.

8 Q. I'm not sure what you mean by
9 "out of the ordinary." Could you explain?

10 MR. FARRELL: Objection to
11 form.

12 BY MR. PLACITELLA:

13 Q. Give me an example if you can
14 or --

15 A. Well, there were literally
16 hundreds of cases. If there was something
17 that appeared in one but not in 99 others, I
18 would expect them to make me aware of it.

19 Q. Okay.

20 A. But if it just fell into the same
21 pattern, I wouldn't.

22 Q. Were they authorized to serve
23 responses to written discovery on behalf of
24 Engelhard? When I say "they," I mean Cahill

1 Gordon.

2 A. Yes.

3 MR. FARRELL: Objection to
4 form.

5 BY MR. PLACITELLA:

6 Q. Okay. Were they permitted to
7 serve answers to written discovery without
8 your approval?

9 MR. FARRELL: Objection to form
10 and foundation.

11 BY MR. PLACITELLA:

12 Q. Your expressed approval on a
13 specific case.

14 MR. FARRELL: Objection to form
15 and foundation.

16 THE WITNESS: Yes.

17 BY MR. PLACITELLA:

18 Q. Did they have direct access --
19 when I say "they," I mean Cahill Gordon. Did
20 they have direct access to Engelhard
21 executives or research scientists in order to
22 respond to discovery in the Engelhard talc
23 litigation?

24 MR. FARRELL: Objection to

1 form; foundation.

2 THE WITNESS: To -- to the
3 extent they needed it, yes.

4 BY MR. PLACITELLA:

5 Q. Okay. And that's not something
6 they would have to go through the legal
7 department for?

8 MR. FARRELL: Objection to form
9 and foundation.

10 THE WITNESS: They wouldn't
11 have to go through the legal department,
12 especially once they had established who
13 the right people were to -- to give them
14 the information they required. But as a
15 practical matter, they probably would.

16 BY MR. PLACITELLA:

17 Q. Okay. Who made the
18 recommendations to Cahill Gordon as to the
19 source of information that was required to
20 answer discovery in the talc litigation? Who
21 at Engelhard?

22 MR. FARRELL: Objection to form
23 and foundation.

24 THE WITNESS: Well, initially,

1 either I would or Tom Halket. It would
2 have been a lawyer who would have
3 directed them to the right person,
4 probably in -- in research.

5 BY MR. PLACITELLA:

6 Q. Okay. Did you ever direct, for
7 example -- scratch that.

8 You have a recollection that
9 Dr. Hemstock testified in the Westfall case?

10 MR. FARRELL: Objection to
11 form.

12 THE WITNESS: I don't have a
13 recollection. I'm not surprised to hear
14 it, yes.

15 BY MR. PLACITELLA:

16 Q. All right. And he was the head
17 of research and development?

18 A. Yes. Yes, he was.

19 Q. Okay. And did you know who on
20 Emil Triglia was?

21 A. Yes.

22 Q. And who was he?

23 A. He, I think, was -- had a senior
24 position with the unit in research that did

1 testing and that kind of thing.

2 Q. Okay. And Peter Gale, do you
3 know who he is?

4 A. I know the name, but I don't
5 know -- and I think he was a former employee.
6 But I don't know what he did when he was
7 there.

8 Q. Okay. Do you have a recollection
9 of making Dr. Hemstock or Dr. Triglia
10 available to the Cahill Gordon firm to
11 provide information to respond to discovery
12 in the Emtal talc litigation?

13 MR. FARRELL: Objection to form
14 and foundation.

15 THE WITNESS: No.

16 BY MR. PLACITELLA:

17 Q. Okay. Would that have been
18 something -- well, strike that.

19 Did Dr. Hemstock have
20 information relevant to the testing of Emtal
21 talc to your knowledge?

22 MR. FARRELL: Objection to form
23 and foundation.

24 THE WITNESS: I believe he did.

1 BY MR. PLACITELLA:

2 Q. What about Dr. Triglia?

3 MR. FARRELL: Same objections.

4 THE WITNESS: I think he
5 probably did.

6 BY MR. PLACITELLA:

7 Q. Okay. Was -- was the information
8 that was in the possession of Dr. Hemstock
9 and Dr. Triglia concerning the testing of
10 Emtal talc made available to Cahill Gordon in
11 order to respond to discovery requests?

12 MR. BOISE: Object to the form
13 of the question; foundation.

14 THE WITNESS: I would -- I
15 would assume that it was.

16 BY MR. PLACITELLA:

17 Q. All right. And how would that
18 information be made available?

19 MR. BOISE: Same objections.

20 THE WITNESS: Well, I -- I
21 don't know. It would depend. They would
22 probably come out, meet with the person,
23 talk to him. If there was a paper copy
24 of something that they had done, they'd

1 give a copy of it to Cahill.

2 MR. TUNIS: I'm going to object
3 to the answer to the extent that it seems
4 clear the witness's answer is based on
5 assumptions rather than on a
6 recollection.

7 THE WITNESS: That's true.

8 BY MR. PLACITELLA:

9 Q. Do you have any evidence that
10 after the Westfall case the identity of
11 either Dr. Hemstock or Dr. Triglia were ever
12 made known in any case involving Engelhard
13 talc?

14 MR. FARRELL: Objection to form
15 and foundation.

16 THE WITNESS: I -- I have no --
17 no such information.

18 BY MR. PLACITELLA:

19 Q. Okay. I want to ask you some
20 questions about -- some additional questions
21 about the reporting requirements that you
22 imposed on the Cahill Gordon firm as it
23 relates to the talc litigation.

24 Did they have any direct --

1 when I say "they," I mean Cahill Gordon --
2 direct contact with your insurance carriers
3 related to the talc litigation?

4 MR. FARRELL: Objection to
5 form.

6 THE WITNESS: I'm not sure.

7 BY MR. PLACITELLA:

8 Q. Okay. Did they have any direct
9 contact with the auditors for Engelhard
10 related to the talc litigation?

11 MR. FARRELL: Objection to
12 form.

13 THE WITNESS: They would be
14 made available to the auditors on a
15 regular basis. And the auditors would --
16 were free to ask them whatever questions
17 they wanted. I believe they did that
18 without me present, at their request,
19 probably.

20 BY MR. PLACITELLA:

21 Q. Do you have a name of a person
22 who -- at the auditor who they would interact
23 with?

24 A. That changed from time to time.

1 We had Arthur Anderson at the beginning of my
2 tenure. They had a conflict. And we then
3 had -- I think we may have had
4 Pricewaterhouse. Later we had Coopers &
5 Lybrand. And I'm not very good with names.
6 I don't remember who the person was. There
7 was a Robin Amesbury at one of point who was
8 our contact. But I -- I'm not sure what
9 company he was with.

10 Q. What kind of information,
11 generally, would they be required to provide
12 the auditors as related to the talc
13 litigation?

14 MR. FARRELL: Objection to form
15 and foundation.

16 THE WITNESS: I don't know.
17 I -- they were -- their instructions were
18 to answer any questions they were asked.
19 The auditors were generally interested in
20 litigation that could have a significant
21 financial impact on the corporation and
22 on the defenses that were being asserted.
23 And they'd always try to get a likelihood
24 of success prognosis, that sort of thing.

1 BY MR. PLACITELLA:

2 Q. And who at Cahill Gordon would be
3 the person, if you know, that was the point
4 on that exchange with your auditors?

5 A. Certainly Peter Sloane in later
6 years. At the beginning of the period, when
7 people was more junior, I don't know. It
8 might have been Ike Cohen himself or possibly
9 David Hyde.

10 Q. Okay. And was the likelihood of
11 future similar Engel -- Emtal cases something
12 that would have been required to be disclosed
13 by Cahill to the auditors?

14 MR. FARRELL: Objection to form
15 and foundation.

16 MR. BOISE: Objection to form.

17 THE WITNESS: I don't know.

18 BY MR. PLACITELLA:

19 Q. Before a case was settled, did
20 Cahill Gordon have to get authorization from
21 somebody in-house at Engelhard?

22 MR. FARRELL: Objection to form
23 and foundation.

24 BY MR. PLACITELLA:

1 Q. If you know.

2 A. Yes.

3 Q. Okay. And who would that person
4 be? Who would they get the authorization
5 from?

6 MR. FARRELL: Objection to form
7 and foundation.

8 THE WITNESS: They'd get it
9 from me.

10 BY MR. PLACITELLA:

11 Q. Okay. Would they have to provide
12 you with a reason for their recommendation
13 for a particular settlement amount?

14 MR. FARRELL: Objection to form
15 and foundation.

16 THE WITNESS: We'd have a
17 discussion about it.

18 BY MR. PLACITELLA:

19 Q. Okay. And were records kept
20 concerning the settlements and the reasons
21 for the settlements --

22 MR. FARRELL: Objection to form
23 and foundation.

24 BY MR. PLACITELLA:

1 Q. -- as it relates specifically to
2 the Engelhard talc litigation?

3 MR. FARRELL: Same objections.

4 THE WITNESS: Not to my
5 knowledge.

6 BY MR. PLACITELLA:

7 Q. Okay. Did Cahill Gordon have a
8 defense budget for their -- for the defense
9 of the talc litigation?

10 MR. FARRELL: Objection to
11 form.

12 THE WITNESS: No.

13 BY MR. PLACITELLA:

14 Q. So their budget was unlimited?

15 MR. PLACITELLA: Objection to
16 form.

17 THE WITNESS: Yes.

18 BY MR. PLACITELLA:

19 Q. Okay. In terms of -- how did the
20 billing occur, just for the talc litigation?

21 MR. FARRELL: Objection to form
22 and foundation.

23 BY MR. PLACITELLA:

24 Q. If you know.

1 A. Well, we would receive a bill
2 monthly. And there would be -- when I say a
3 bill, there would be actually a series of
4 bills, a separate one for each matter. And
5 there would be a general memorandum that
6 would summarize the work that was done for
7 each matter. Talc -- the talc litigation
8 would be one of them.

9 And I would review those. If
10 I had any questions, I would discuss it with
11 Cahill and then approve it for payment.

12 Q. Okay. And when that bill was
13 approved for payment, where did it physically
14 go?

15 MR. FARRELL: Objection to form
16 and foundation.

17 THE WITNESS: To accounts
18 payable, I guess.

19 BY MR. PLACITELLA:

20 Q. Okay. And who was that person in
21 charge, if you remember?

22 A. I don't know.

23 Q. Okay. And do you know what
24 ultimately happened to the bills that were

1 submitted?

2 MR. FARRELL: Objection to
3 form.

4 THE WITNESS: No, I don't.

5 BY MR. PLACITELLA:

6 Q. Did the counts -- the accounts
7 payable have a separate ledger for the
8 defense of the Emtal talc litigation?

9 MR. FARRELL: Objection to
10 form; foundation.

11 THE WITNESS: I don't know.

12 BY MR. PLACITELLA:

13 Q. Did accounts payable ever provide
14 you with summaries of what the legal defense
15 costs were for the defense of the Emtal talc
16 litigation?

17 MR. FARRELL: Objection to
18 form.

19 THE WITNESS: I received a
20 number of things from our finance people
21 that consisted of the -- I call them IBM
22 printouts, but it was -- in those days,
23 you got things on paper with perforations
24 on both margins. And it would have an

1 analysis of legal department
2 expenditures. I believe it was probably
3 broken down, litigation costs were
4 probably broken down by matter.

5 I didn't pay much attention to
6 it because I had reviewed it in more
7 detail on a monthly basis.

8 BY MR. PLACITELLA:

9 Q. Were they permanent business
10 records that -- reports that you're referring
11 to?

12 MR. FARRELL: Objection to form
13 and foundation.

14 THE WITNESS: Well, they would
15 have been covered by the document
16 retention policy. I -- I'm not sure how
17 permanent you would be. Probably after a
18 year or so, they wouldn't be required to
19 be retained.

20 BY MR. PLACITELLA:

21 Q. Now, in terms of the accounts
22 payable records, how did they figure into
23 the -- the accounts -- accounts payable
24 ledgers, how did they figure into the

1 document retention policy?

2 MR. FARRELL: Objection to
3 form.

4 THE WITNESS: I don't -- I
5 don't recall.

6 BY MR. PLACITELLA:

7 Q. Okay. If -- when you were there
8 in, say, 2005, and you wanted to know how
9 much Cahill Gordon billed you from two --
10 2003 to 2005, could you get that information?

11 MR. FARRELL: Objection to form
12 and foundation.

13 THE WITNESS: I'm sure I could.

14 BY MR. PLACITELLA:

15 Q. Okay. And if you were there in
16 2005 and you wanted to know how much Cahill
17 Gordon billed you from 2000 to 2005, could
18 you secure that information?

19 MR. FARRELL: Objection to form
20 foundation.

21 THE WITNESS: I would think I
22 could. I -- but I don't know for a fact.

23 MR. PLACITELLA: Okay.

24 THE WITNESS: I never -- never

1 had occasion to find out.

2 BY MR. PLACITELLA:

3 Q. And how -- who would you ask or
4 what would you -- if you had to make that
5 request, what would you do?

6 MR. FARRELL: Same objections.

7 THE WITNESS: Well, in the
8 first instance, I would ask Mike
9 Sperduto, who was our chief financial
10 officer. And he would put me in touch
11 with somebody in his finance organization
12 who could give me the answer.

13 BY MR. PLACITELLA:

14 Q. Okay. Now, as corporate
15 secretary and general counsel, were you
16 required to keep the board of directors
17 apprized of what was going on in the Emtal
18 talc litigation?

19 MR. FARRELL: Objection to
20 form.

21 THE WITNESS: I don't know that
22 I was required to. I did on an
23 occasional basis.

24 BY MR. PLACITELLA:

1 Q. Okay. And what sort of
2 information would you be reporting to the
3 board of directors about the Engelhard talc
4 litigation?

5 MR. FARRELL: Objection to
6 form; foundation. And I'd also caution
7 you, Mr. Dornbusch, not to reveal the
8 substance of any communications that
9 preserve privileges and work product that
10 would apply to such communications with
11 the board.

12 THE WITNESS: I would give them
13 an overview of where we stood.

14 BY MR. PLACITELLA:

15 Q. And when you say "overview," what
16 do you mean by that?

17 A. Well, I'd tell them how many
18 cases, how many since the last period had
19 been settled; if they were settled for money,
20 how much. That sort of thing.

21 Q. And if they were dismissed with
22 no money, would you tell them that?

23 A. Yes.

24 Q. Okay. Would you tell them the

1 reasons?

2 MR. FARRELL: Objection to
3 form; foundation; privilege, to the
4 extent this gets into the substance of
5 such communications.

6 Can you answer that question
7 without revealing the substance of
8 communications?

9 THE WITNESS: No.

10 MR. FARRELL: Then I instruct
11 you not to answer the question.

12 BY MR. PLACITELLA:

13 Q. What's the purpose -- what was
14 the purpose of reporting to the board of
15 directors concerning the Emtal talc
16 litigation?

17 MR. FARRELL: Objection to form
18 and foundation.

19 THE WITNESS: It was to keep
20 them apprized of the current status.

21 BY MR. PLACITELLA:

22 Q. Would they use that information
23 in making decisions and deciding what they
24 had to report to their auditors, for example?

1 MR. FARRELL: Objection to
2 form; foundation; calls for speculation.

3 THE WITNESS: Yeah, I don't --
4 I don't know what they did with the
5 information.

6 BY MR. PLACITELLA:

7 Q. What was the format of your
8 reports? Were they oral, written, both?

9 MR. FARRELL: Objection.
10 Objection to form.

11 THE WITNESS: Oral.

12 BY MR. PLACITELLA:

13 Q. Okay. And I'm sorry, you might
14 have said this, but how often did you make
15 those reports?

16 MR. FARRELL: Objection to
17 form.

18 THE WITNESS: Perhaps once or
19 twice a year.

20 BY MR. PLACITELLA:

21 Q. Okay. And if there -- something
22 significant happened in the litigation that
23 had the potential to adversely affect the
24 company, would you report that?

1 MR. FARRELL: Objection to form
2 and foundation.

3 THE WITNESS: Yes.

4 BY MR. PLACITELLA:

5 Q. And did you ever make such a
6 report in the Emtal talc litigation?

7 MR. FARRELL: Objection to
8 form; foundation; attorney-client
9 privilege.

10 I instruct you not to answer
11 the question.

12 BY MR. PLACITELLA:

13 Q. Was the board -- board of
14 directors aware of the asbestos testing
15 evidence concerning Emtal talc?

16 MR. FARRELL: Objection to form
17 and foundation; calls for speculation.

18 MR. MARINO: Are you asking
19 Mr. Dornbusch if he advised the board of
20 directors?

21 MR. PLACITELLA: No. I'm
22 asking if they know -- they knew, to his
23 knowledge.

24 MR. MARINO: You're asking him

1 if he knows what they know?

2 MR. PLACITELLA: Right.

3 MR. FARRELL: Without -- can
4 you answer that question without
5 revealing the substance of communications
6 between a lawyer for the company,
7 including yourself, and the board of
8 directors?

9 THE WITNESS: No.

10 MR. FARRELL: Then I instruct
11 you not to answer on privilege grounds.

12 MR. PLACITELLA: Can you read
13 that question back, please.

14 (Whereupon, the court reporter
15 read back the record as requested.)

16 BY MR. PLACITELLA:

17 Q. So to be clear, did you -- do you
18 know whether the board of directors was aware
19 of the asbestos testing evidence related to
20 Emtal talc?

21 MR. FARRELL: Objection to form
22 and foundation.

23 Can you answer that with a yes
24 or no, Mr. Dornbusch?

1 THE WITNESS: No.

2 MR. FARRELL: Then I instruct
3 you not to answer the question on
4 privilege grounds.

5 BY MR. PLACITELLA:

6 Q. Do you know whether the board of
7 directors was aware of the testimony by
8 Engelhard scientists under oath concerning
9 the asbestos testing of Emtal talc?

10 MR. FARRELL: Same objections;
11 same instruction.

12 Can you answer that
13 question -- let me take a step back. Do
14 you know the answer to that question?

15 THE WITNESS: No.

16 BY MR. PLACITELLA:

17 Q. Do you know whether the -- can
18 you -- can you distinguish for me your duties
19 as the corporate secretary versus the general
20 counsel?

21 MR. FARRELL: Objection to
22 form.

23 MR. MARINO: Is the question
24 whether one of those duties entailed --

1 MR. PLACITELLA: No.

2 MR. MARINO: -- his role as a
3 lawyer versus the other?

4 MR. PLACITELLA: Yeah. I want
5 to know if there was a difference.

6 BY MR. PLACITELLA:

7 Q. Was there a difference between
8 being corporate secretary and general
9 counsel? You had two different positions.

10 A. There was. As corporate
11 secretary, I was, of course, responsible for
12 maintaining the minutes, reporting the
13 meetings -- the minutes of the meetings of
14 the board and I think one of the committees
15 too. I think I -- I served as secretary to
16 the finance committee.

17 I -- and as -- as the company
18 lawyer, I would advise them on legal matters
19 that involved the corporation as needed.

20 Q. Okay. Now, when you say "the
21 minutes," what do you mean by that?

22 A. The minutes of the meeting.

23 Q. That you attended?

24 A. Yes.

1 Q. And you would physically write
2 them up?

3 A. Yes.

4 Q. And what would happen with those
5 minutes?

6 A. They --

7 MR. FARRELL: Objection to form
8 and foundation.

9 THE WITNESS: They would be
10 circulated with the rest of the board
11 materials prior to the next meeting. And
12 if approved, without any amendment, they
13 would be put in the minute books. If
14 there was a -- a change or something that
15 I had gotten wrong, it would be corrected
16 and then put in the minute books.

17 BY MR. PLACITELLA:

18 Q. And the -- were the minute books
19 kept as permanent records?

20 A. Yes.

21 Q. Okay. And who was in charge of
22 keeping those?

23 A. Well, I was, as secretary.

24 Q. And when you left -- ultimately

1 left Engelhard, did you turn those minute
2 books over to BASF?

3 A. Yes.

4 Q. Okay. And in those -- in those
5 minutes, Did you ever incorporate information
6 related to the Emtal talc litigation?

7 MR. FARRELL: Objection to form
8 foundation.

9 Can you answer that with a yes
10 or a no?

11 THE WITNESS: I can. I --

12 MR. FARRELL: Go ahead.

13 THE WITNESS: Yes.

14 BY MR. PLACITELLA:

15 Q. Okay. And in those minutes, did
16 you ever incorporate information concerning
17 the events that happened in the Emtal talc
18 litigation that had the potential to
19 adversely affect the company?

20 MR. FARRELL: Objection to
21 form; foundation; attorney-client
22 privilege.

23 I instruct you not to answer
24 the question.

1 MR. PLACITELLA: So just so
2 we're clear, your position is that the
3 board minutes are privileged?

4 MR. FARRELL: Not the entirety
5 of board minutes. But certainly with
6 respect to that question, asking the
7 general counsel of a corporation whether
8 he advised the board of directors about
9 an adverse event in litigation that would
10 have an impact on the company, yes, I'm
11 asserting privilege over that
12 communication and whether it's in the
13 document. And I've instructed him not to
14 answer the question.

15 MR. PLACITELLA: Okay.

16 MR. FARRELL: You're deposing
17 the former general counsel of a
18 corporation about his communications --

19 MR. PLACITELLA: I don't need a
20 lecture from you. I don't need a lecture
21 from you.

22 MR. MARINO: No, let's --

23 MR. FARRELL: You asked me a
24 question.

1 MR. PLACITELLA: Okay. You
2 already -- you already did --

3 MR. FARRELL: You're deposing
4 the former general counsel of a
5 corporation about his communications and
6 updates on litigation with the board of
7 directors of a company.

8 MR. PLACITELLA: Let me know
9 when you're done.

10 MR. FARRELL: I'm finished.

11 MR. PLACITELLA: Thank you.

12 MR. MARINO: Chris, it's not
13 improper for him to make a clarifying
14 statement on the record. There's --
15 there's nothing -- there's nothing
16 objectionable about that.

17 BY MR. PLACITELLA:

18 Q. Did you ever have to provide
19 information to your -- you personally have to
20 provide information to the auditors for
21 Engelhard concerning the talc litigation?

22 MR. FARRELL: Objection to
23 form.

24 THE WITNESS: Yes.

1 BY MR. PLACITELLA:

2 Q. Okay. And was that information
3 required in order to comply with the SEC
4 rules?

5 MR. FARRELL: Objection to form
6 and foundation.

7 THE WITNESS: I don't know what
8 it was require --

9 BY MR. PLACITELLA:

10 Q. Did you -- go ahead. I'm sorry.

11 A. It was -- they -- they would
12 frequently meet with me to talk about
13 litigation. And they'd have a checklist of
14 things they wanted to talk about. And if
15 there was something I thought they should
16 know that wasn't on their list, I would tell
17 them about it. We had a very open policy
18 with our auditors.

19 Q. Okay. And did you ever provide
20 information to your auditors related to Emtal
21 talc litigation that you thought could impact
22 negatively the corporation?

23 MR. FARRELL: Objection to
24 form; foundation; privilege.

1 I instruct you not to answer
2 the question.

3 MR. PLACITELLA: So we're
4 clear, your position is information
5 provided to the auditors, who were there
6 for purposes of SEC compliance, is
7 privileged?

8 MR. FARRELL: You're asking the
9 former general counsel of a corporation
10 for his opinion regarding the disclosure
11 of information related to litigation.
12 It's work product, and it's privileged.

13 MR. PLACITELLA: Okay.

14 MR. FARRELL: I've asserted an
15 objection.

16 MR. PLACITELLA: All right. So
17 just so we're clear before the Court,
18 it's your position that information
19 provided by Mr. Dornbusch to the
20 corporate auditors, who are not employees
21 or officers of the corporation, is
22 privileged?

23 MR. FARRELL: I didn't say that
24 Mr. Placitella. I was responding to your

1 specific question, which called for
2 Mr. Dornbusch's mental impressions and
3 opinion about facts related to litigation
4 and whether or why they were communicated
5 to somebody. That is work product and it
6 is privileged. I've asserted an
7 objection, and I've instructed the
8 witness not to answer the question.

9 BY MR. PLACITELLA:

10 Q. Did you ever provide information
11 to the auditors concerning information you
12 thought was important that they should know
13 as part of their reporting requirements to
14 the SEC related to the Engelhard talc
15 litigation?

16 MR. FARRELL: Same objections;
17 same instruction not to answer. It's
18 frankly the same question you just asked
19 that I just instructed on.

20 BY MR. PLACITELLA:

21 Q. Did you ever provide -- well, let
22 me ask you this question: Would an accurate
23 disclosure to your auditors include
24 information that you had about the existence

1 or a lack thereof of asbestos in Emtal talc?

2 MR. FARRELL: Same objections;
3 same instruction not to answer.

4 BY MR. PLACITELLA:

5 Q. What specifically did you tell
6 the -- your auditors about the Emtal talc
7 litigation, to your recollection?

8 MR. FARRELL: Objection to form
9 and foundation.

10 I need to confer with the
11 witness before he can respond to this
12 question.

13 MR. PLACITELLA: I don't think
14 so.

15 MR. FARRELL: Well, then I need
16 to instruct him not to answer the
17 question on privilege grounds --

18 MR. PLACITELLA: Okay.

19 MR. FARRELL: -- if you're not
20 going to allow me to confer with him.

21 MR. MARINO: Can we go off the
22 record for a moment?

23 MR. PLACITELLA: Uh-huh.

24 THE VIDEOGRAPHER: The time is

1 now 11 o'clock a.m. We're going off the
2 record.

3 (Whereupon, there was a
4 discussion held off the record.)

5 (Whereupon, a brief recess was
6 taken.)

7 THE VIDEOGRAPHER: The time is
8 now 11:10 a.m. We are back on the
9 record.

10 BY MR. PLACITELLA:

11 Q. Okay. What information did you
12 provide to Engelhard's auditors concerning
13 the Emtal talc litigation?

14 MR. FARRELL: Objection to form
15 and foundation.

16 THE WITNESS: I don't remember.

17 BY MR. PLACITELLA:

18 Q. Was there a record kept of what
19 information you provided to the auditors?

20 A. No.

21 Q. Okay. Did the auditors keep
22 notes of what you told them?

23 MR. FARRELL: Object --
24 objection to form and foundation.

1 THE WITNESS: I saw them
2 writing on paper. I -- yeah.

3 BY MR. PLACITELLA:

4 Q. Do you have a recollection of
5 ever telling the auditors that Engelhard was
6 in possession of evidence indicating there
7 was asbestos in the Emtal talc?

8 MR. FARRELL: Objection to form
9 and foundation.

10 THE WITNESS: I have no
11 specific recollection of what I told them
12 about anything.

13 BY MR. PLACITELLA:

14 Q. Would that information have been
15 required to be provided, if you know?

16 A. I --

17 MR. FARRELL: Objection to
18 form; foundation.

19 Are you asking him for his
20 opinion on this?

21 MR. PLACITELLA: I'm asking him
22 his experience.

23 MR. FARRELL: You're asking the
24 general counsel of the company whether it

1 would have been required to do something.

2 Are you asking for his opinion?

3 MR. PLACITELLA: I'm asking him
4 in terms of their business practices and
5 his dealing with the auditor, would that
6 information have been required for
7 disclosure.

8 MR. FARRELL: Those are two
9 different questions.

10 BY MR. PLACITELLA:

11 Q. You can answer it.

12 MR. FARRELL: Mr. Dornbusch,
13 can you respond to that question without
14 getting into your personal assessment of
15 legal issues?

16 THE WITNESS: No.

17 MR. FARRELL: Then I instruct
18 you not to answer the question.

19 BY MR. PLACITELLA:

20 Q. Do you know whether the reasons
21 why Emtal cases were dismissed were ever
22 communicated to your auditors?

23 MR. FARRELL: Objection to form
24 and foundation.

1 Can you answer that with a yes
2 or a no?

3 THE WITNESS: No, I can't.

4 MR. FARRELL: Do you know the
5 answer to the question?

6 THE WITNESS: No.

7 BY MR. PLACITELLA:

8 Q. What was your understanding of
9 the type of information you were required to
10 disclose to the auditors of Engelhard related
11 to the Emtal talc litigation?

12 MR. FARRELL: Objection to form
13 and foundation.

14 THE WITNESS: Just a general
15 understanding that anything that could
16 have a material financial impact on the
17 corporation.

18 BY MR. PLACITELLA:

19 Q. Did you ever come to the
20 conclusion that evidence of asbestos in Emtal
21 talc could have a material impact on the
22 corporation?

23 MR. FARRELL: Objection to
24 form; foundation; work product.

1 Instruct you not to answer the
2 question.

3 BY MR. PLACITELLA:

4 Q. Do you have a recollection of
5 ever coming to that conclusion?

6 MR. FARRELL: Same objections;
7 same instruction on privilege grounds.

8 BY MR. PLACITELLA:

9 Q. I'm not asking you for what you
10 concluded. I'm asking you if you have a
11 recollection.

12 A. I do not.

13 MR. FARRELL: I've already
14 instructed the witness on this question.

15 BY MR. PLACITELLA:

16 Q. Okay. Did you ever -- whose
17 decision was it to disclose evidence in
18 possession of Engelhard related to the Emtal
19 talc litigation? Whose decision was that?

20 MR. FARRELL: Objection to
21 form; foundation; vague.

22 THE WITNESS: Disclose it to
23 whom?

24 BY MR. PLACITELLA:

1 Q. In the -- to the adverse side in
2 the context of -- good question.

3 A. Uh-huh.

4 Q. Let me rephrase it.

5 Whose decision was it to
6 disclose information or disclose evidence
7 pertinent to the litigation in the Emtal talc
8 litigation to the other side?

9 MR. FARRELL: Objection to form
10 and foundation.

11 THE WITNESS: Well, I guess
12 ultimately, it would have been my
13 decision.

14 MR. PLACITELLA: Okay.

15 THE WITNESS: It would have
16 been -- it would come about through
17 outside counsel, through Cahill. And
18 they would come to me, and we'd talk
19 about it.

20 BY MR. PLACITELLA:

21 Q. Did you ever make a decision --
22 well, scratch that.

23 Do you know whether the
24 information contained in P-1 was ever

1 disclosed in the --

2 A. Oh, that's the big --

3 Q. -- Emtal talc litigation?

4 MR. FARRELL: Objection to form
5 and foundation; vague as to time.

6 THE WITNESS: No, I don't know.

7 BY MR. PLACITELLA:

8 Q. So would it have been your
9 decision, ultimately, whether the information
10 contained in P-1 would be disclosed to
11 litigants in the Emtal talc litigation?

12 MR. FARRELL: Same objections;
13 assumes facts.

14 THE WITNESS: If it came up,
15 yes, I -- I was not aware of the
16 existence of what's been identified as
17 P-1 until my deposition in the state
18 matter.

19 BY MR. PLACITELLA:

20 Q. Well, you were aware of it when
21 the memo was sent to you by Mr. Hyde in 1982,
22 weren't you?

23 A. Oh, yes.

24 Q. Okay.

1 MR. FARRELL: Objection to
2 form.

3 BY MR. PLACITELLA:

4 Q. So once you were aware of it in
5 1982, when you received it from Mr. Hyde,
6 whose decision was it whether to disclose
7 that information to litigants in the Emtal
8 talc litigation?

9 MR. FARRELL: Objection to
10 form; foundation; vague; assumes facts.

11 THE WITNESS: I don't recall it
12 ever being discussed.

13 BY MR. PLACITELLA:

14 Q. My question was, whose decision
15 was it whether to disclose that information
16 to the other side?

17 MR. FARRELL: Same objections.

18 THE WITNESS: There was no
19 decision about it. It wasn't discussed.

20 BY MR. PLACITELLA:

21 Q. So no one -- the subject of
22 whether you should disclose asbestos testing
23 to litigants in the Emtal talc litigation
24 never came up?

1 A. I don't re --

2 MR. FARRELL: Objection to
3 form; foundation; asked and answered.

4 Go ahead, Mr. Dornbusch.

5 THE WITNESS: I don't recall.

6 BY MR. PLACITELLA:

7 Q. You don't recall what?

8 A. I don't recall discussing or
9 considering that issue.

10 Q. Well, whose responsibility would
11 it have been to make sure that relevant
12 testing evidence for asbestos in Emtal talc
13 would have been disclosed in litigation
14 involving asbestos in Emtal talc?

15 MR. FARRELL: Objection to
16 form; foundation; assumes facts; vague as
17 to time.

18 THE WITNESS: The disclosure
19 vehicle would have been something that
20 would have been put together by Cahill
21 Gordon. They -- they would not need my
22 approval to -- and they -- they were
23 given this information. This was coming
24 back from them. Having this information,

1 if they felt it was appropriate to
2 disclose it, I would assume they would
3 have disclosed it.

4 BY MR. PLACITELLA:

5 Q. So you had no role whatsoever in
6 making the determination as to whether this
7 information be -- should be disclosed to
8 people who were suing Engelhard for
9 asbestos-related injuries?

10 MR. FARRELL: Objection to
11 form.

12 BY MR. PLACITELLA:

13 Q. Is that what you're saying?

14 MR. FARRELL: Objection to form
15 and foundation.

16 MR. BOISE: Also
17 mischaracterizes testimony.

18 THE WITNESS: I -- I explained
19 that I relied upon Cahill to respond to
20 discovery requests appropriately. I gave
21 them whatever I had, whatever the company
22 had, and counted upon them to draft an
23 appropriate response.

24 BY MR. PLACITELLA:

1 Q. So you basically just outsourced
2 to them whatever was required in order to
3 respond to discovery?

4 MR. FARRELL: Objection to
5 form.

6 THE WITNESS: But -- yeah.
7 Yes.

8 BY MR. PLACITELLA:

9 Q. Okay. Before you -- we mentioned
10 briefly the Westfall case. Can you tell me
11 what were the circumstances that you learned
12 of the Westfall case?

13 A. I don't -- I don't recall. We
14 were sued, and I -- I reserved -- I would
15 have reserved the service papers.

16 Q. Okay. You were involved in that
17 case, correct, yourself?

18 MR. FARRELL: Objection to
19 form.

20 THE WITNESS: No, not really.

21 BY MR. PLACITELLA:

22 Q. You didn't file Affidavits in
23 that case?

24 A. Well, if I did, I did. I -- I

1 don't recall doing it.

2 Q. Now, you left -- can you give me
3 Dornbusch-1.

4 Dornbusch-1 is a report for
5 Engelhard Corporation for the Securities and
6 Exchange Commission.

7 Do you see that?

8 A. Yes.

9 Q. And that report was issued at the
10 time -- at or about the time that you left?

11 MR. FARRELL: Objection to
12 form.

13 THE WITNESS: May of 2006, yes.

14 BY MR. PLACITELLA:

15 Q. Okay. And if I go to page 17, it
16 talks about shares of ownership.

17 Do you see that?

18 A. Yes.

19 Q. Okay. And at the time of -- at
20 the time you left, you owned 754,787 shares?

21 A. That's what it says, yes.

22 Q. And that there was a tender offer
23 for, do you recall, \$45 a share?

24 A. I didn't recall that that was the

1 price of the tender, but yes, I see it.

2 Q. Okay.

3 MR. TUNIS: I'm sorry,

4 Mr. Dornbusch --

5 THE WITNESS: Yeah, I -- I see

6 that that's what it says here. I didn't

7 recall that that was the price.

8 BY MR. PLACITELLA:

9 Q. Do you recall, if I did the math,
10 that when you left, you received about
11 \$33 million?

12 A. It wasn't that much, but...

13 Q. It was pretty close?

14 A. I received -- yeah, it was my
15 life savings.

16 Q. Okay. And at the time you left,
17 you were making, what, about a million
18 dollars a year with benefits?

19 A. I don't remember.

20 Q. Okay. Now, can you give me
21 Exhibit 3.

22 MS. CALLAHAN: Dornbusch-3?

23 MR. PLACITELLA: No. Just

24 Exhibit 3.

1 THE WITNESS: Oh.

2 BY MR. PLACITELLA:

3 Q. Exhibit 3 is the deposition of
4 Dr. Glenn Hemstock given on March 16th, 1983,
5 in the Westfall case.

6 Do you see that?

7 A. Uh-huh.

8 MR. BOISE: This is an excerpt?

9 MR. PLACITELLA: Yes. Well, he
10 has the full. I gave you the excerpts
11 I'm asking questions about.

12 MR. BOISE: I don't even have
13 the excerpts. That's why I'm asking.

14 BY MR. PLACITELLA:

15 Q. Okay. And on the next page, it
16 indicates that Mr. Sloane and Mr. Halket were
17 there on behalf of your corporation, correct?

18 A. Yes.

19 Q. And it -- if you go to page 17 --

20 A. Yes.

21 Q. -- Dr. Halket is asked the
22 following question and answer -- I'm sorry,
23 Dr. Hemstock: "Now, you testified that your
24 department has tested both processed talc and

1 raw talc ore from the Emtal mine for the
2 presence of chrysotile asbestos; is that
3 correct?"

4 Answer: "Yes."

5 "Has your department in its
6 research found chrysotile asbestos in both
7 processed talc and raw ore from the Emtal
8 mine?"

9 And the answer is "Yes."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And when is the first time
13 that you learned about this testimony?

14 A. I don't know.

15 Q. Would you have learned it at or
16 about the time the case was pending?

17 MR. TUNIS: Objection to form.

18 MR. FARRELL: Objection to

19 form.

20 THE WITNESS: I don't know.

21 BY MR. PLACITELLA:

22 Q. Certainly your department was
23 aware of the testimony, correct?

24 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: Mr. Halket was
3 present, so he -- he would have known.

4 MR. PLACITELLA: Okay.

5 MR. MARINO: Can I -- Chris,
6 can I ask you to show Mr. Dornbusch the
7 complete testimony on this subject? It's
8 a little difficult to see the page
9 numbers. But what appears -- what you've
10 identified as page 17, could you -- could
11 you please show him pages 17 and 18?
12 Does he have that in front of him?

13 MR. PLACITELLA: He's got it in
14 front of him.

15 MR. BOYLE: Well, no. No.
16 Your excerpt actually excludes page 18.
17 So if you'd like, I can -- we can read
18 it.

19 MR. MARINO: Well, I -- I --
20 well, yeah. Why don't I do that.

21 MR. PLACITELLA: Well, no.
22 He's got 18 in front of him.

23 MR. MARINO: Does he?

24 MR. PLACITELLA: Yes.

1 THE WITNESS: I have the whole
2 thing, yeah.

3 MR. PLACITELLA: He's got the
4 whole thing.

5 MR. MARINO: Okay. So let's
6 take a moment to just look --

7 MR. PLACITELLA: So why don't
8 you read it, Mr. Dornbusch.

9 MR. MARINO: Yeah. Let's take
10 a moment to do that. That's great.
11 Thank you.

12 THE WITNESS: Okay.

13 BY MR. PLACITELLA:

14 Q. In reading page 18, does that
15 refresh your memory in any way of what
16 Dr. Halket -- Dr. Hemstock testified to?

17 MR. FARRELL: Objection to form
18 and foundation.

19 THE WITNESS: It doesn't
20 refresh my recollection. It -- it -- it
21 states that the amounts of chrysotile
22 found by Dr. Hemstock were trace
23 quantities.

24 BY MR. PLACITELLA:

1 Q. Okay. And then can you go to
2 page 103. I put that up.

3 Does he also testify there
4 about more than trace quantities?

5 MR. FARRELL: Objection to form
6 and foundation; misstates his testimony.

7 BY MR. PLACITELLA:

8 Q. Well let me read it to you. Does
9 Dr. Hemstock provide a response to the
10 following question: "Dr. Hemstock, in the
11 first full paragraph of page two of this
12 memorandum, there is a statement from
13 Mr. Triglia" -- he was the scientist you
14 talked about before, right, Mr. Dornbusch?

15 A. Yes. Yes.

16 Q. -- "that, 'The results showed
17 that although there was a variability in the
18 number of fibers counted from week to week,
19 there were, nevertheless, fibers present in
20 every sample of Emtal 42 tested. A few of
21 the Emtal 42 samples showed relatively high
22 fiber counts.' Do you know to what fiber
23 Mr. Triglia is referring in that sentence?"

24 Answer: "Those would be

1 fibers observed in the electron microscope
2 evaluation of those samples."

3 Did I read that correctly?

4 A. Yes.

5 MR. PLACITELLA: Okay. Now,
6 can you give me Exhibit 4, please.

7 BY MR. PLACITELLA:

8 Q. By the way, was -- after the
9 Westfall case, was Dr. Hemstock's deposition
10 ever disclosed to any other litigant
11 before -- during the time that you worked at
12 Engelhard?

13 MR. FARRELL: Objection to
14 form.

15 THE WITNESS: I do not know. I
16 don't know.

17 BY MR. PLACITELLA:

18 Q. Should it have been?

19 MR. FARRELL: Objection to
20 form; foundation; work product; and
21 privilege.

22 I instruct you not to answer
23 the question.

24 BY MR. PLACITELLA:

1 Q. I'm going to show you what's been
2 marked as Exhibit 4. Exhibit 4 is the
3 deposition of Peter Gale taken on April 26th,
4 1983, in the Westfall case.

5 Have you seen this before?

6 A. Not that I recall.

7 Q. Do you recall actually suing
8 Peter Gale for giving testimony in the
9 Westfall case?

10 MR. FARRELL: Objection to
11 form; foundation.

12 THE WITNESS: Yes, I do.

13 BY MR. PLACITELLA:

14 Q. Okay. And can you go to page 19.
15 In page 19, Peter Gale talks about tests that
16 were performed with an electron microscope at
17 Georgia Tech in 1979.

18 Do you see that?

19 A. I see -- yes, I see the
20 highlighted material.

21 Q. Okay.

22 A. And the date, yes.

23 Q. All right. And on the next page,
24 he indicates, does he not, that the testing

1 showed chrysotile fibers in the Emtal talc?

2 MR. FARRELL: Objection to
3 form; foundation; misstates his
4 testimony.

5 THE WITNESS: I see his
6 testimony, yes.

7 BY MR. PLACITELLA:

8 Q. Okay. Now, if you go back to the
9 second page, you had two lawyers there -- or
10 you had -- I'm sorry, you had Howard Sloane
11 there on behalf of your corporation?

12 A. Yes.

13 Q. Okay. And was the information --
14 was this deposition ever disclosed to any
15 litigant after the Westfall case at any point
16 in time?

17 MR. FARRELL: Objection to form
18 and foundation; assumes facts.

19 THE WITNESS: I don't know.

20 BY MR. PLACITELLA:

21 Q. Do you know who Dr. William
22 Glassley is?

23 A. No.

24 Q. Okay. You don't -- do you have

1 any recollection of any point in time
2 learning that Dr. Glassley found asbestos
3 at -- at the Johnson mine?

4 MR. FARRELL: Objection to form
5 and foundation.

6 THE WITNESS: No.

7 BY MR. PLACITELLA:

8 Q. Okay. After the Westfall case
9 was concluded, what physically happened, if
10 you know, to the physical transcripts of the
11 Engelhard scientists that testified in those
12 cases -- in that case?

13 MR. FARRELL: Objection to form
14 and foundation.

15 THE WITNESS: I do not know.

16 BY MR. PLACITELLA:

17 Q. Who would know that?

18 MR. FARRELL: Objection to form
19 and foundation.

20 THE WITNESS: Peter Sloane
21 would probably know.

22 BY MR. PLACITELLA:

23 Q. And do you know what happened to
24 the exhibits that were attached to the

1 transcripts?

2 MR. FARRELL: Same objections.

3 THE WITNESS: No.

4 BY MR. PLACITELLA:

5 Q. Okay. Do you know whether the
6 original transcripts were ever returned to
7 Engelhard?

8 MR. FARRELL: Same objections.

9 THE WITNESS: I don't know.

10 BY MR. PLACITELLA:

11 Q. Okay. Do you know whether
12 in-house counsel -- and I mean your --
13 your -- your department -- maintained copies
14 of the Westfall file?

15 MR. FARRELL: Objection to form
16 and foundation.

17 THE WITNESS: I don't know.

18 BY MR. PLACITELLA:

19 Q. Okay. Do you know whether it was
20 a matter of procedure or policy that
21 Mr. Halket would have received copies of the
22 transcripts and exhibits?

23 MR. FARRELL: Objection to
24 form.

1 MR. TUNIS: Objection to form.

2 THE WITNESS: I don't know.

3 BY MR. PLACITELLA:

4 Q. Okay. Did you have an
5 expectation that Cahill Gordon would be
6 keeping a permanent copy of the Westfall
7 file?

8 MR. FARRELL: Objection to form
9 and foundation.

10 MR. TUNIS: Objection.

11 THE WITNESS: I never thought
12 of it. I don't know.

13 BY MR. PLACITELLA:

14 Q. Okay. Did you have an
15 expectation that that file would be destroyed
16 at the conclusion of the Westfall case?

17 MR. FARRELL: Objection to form
18 and foundation.

19 MR. TUNIS: Objection to form.

20 THE WITNESS: I don't know.

21 BY MR. PLACITELLA:

22 Q. Well, what was your policy
23 concerning the -- destruction of evidence
24 that was created during the course of the

1 Engelhard talc litigation?

2 MR. MARINO: Are you asking
3 about a document retention policy?

4 MR. TUNIS: Form and
5 foundation.

6 MR. PLACITELLA: No.

7 MR. MARINO: Is that your
8 question.

9 MR. PLACITELLA: No.

10 MR. MARINO: What was the
11 policy about the destruction of evidence?
12 Is that your question?

13 MR. PLACITELLA: Yes. Yeah.

14 MR. FARRELL: Objection to form
15 and foundation.

16 MR. TUNIS: Same.

17 THE WITNESS: There -- there
18 was no policy that I'm aware of.

19 BY MR. PLACITELLA:

20 Q. Was it your understanding that
21 you had a responsibility to retain evidence
22 that was created during the course of the
23 Engelhard talc litigation?

24 MR. MARINO: Can I have a time

1 frame, please.

2 MR. PLACITELLA: At any time.

3 MR. FARRELL: Objection to form
4 foundation.

5 MR. TUNIS: Objection; time
6 frame.

7 THE WITNESS: So what -- what
8 is the question as it stands?

9 MR. PLACITELLA: Can you read
10 it back, please.

11 (Whereupon, the court reporter
12 read back the record as requested.)

13 MR. FARRELL: Objection to
14 form; foundation; vague.

15 THE WITNESS: I don't have any
16 current understanding.

17 BY MR. PLACITELLA:

18 Q. What do you mean by that?

19 A. I -- I don't -- I don't recall
20 that issue at all.

21 Q. Well, did you understand, as
22 general counsel, that you had a
23 responsibility to maintain evidence when
24 there were other case -- similar cases

1 pending?

2 MR. FARRELL: Objection to
3 form --

4 MR. TUNIS: Objection.

5 MR. FARRELL: -- and
6 foundation.

7 MR. TUNIS: And vague as to
8 time frame.

9 BY MR. PLACITELLA:

10 Q. At any point in time.

11 A. Yes.

12 Q. Okay. Now, I want to talk to you
13 about document retention policy in general.

14 Prior to 1984, did Engelhard
15 have a document retention policy, if you
16 remember?

17 MR. FARRELL: Objection to
18 form.

19 THE WITNESS: I believe we had
20 several.

21 MR. PLACITELLA: Give me 176,
22 please. 176.

23 BY MR. PLACITELLA:

24 Q. Okay. If you look at -- what you

1 have in front of you are responses to
2 discovery by BASF in this case. And if you
3 look at request No. 21, the request is:
4 "After Engelhard was sued in an asbestos
5 mesothelioma case in Rhode Island known as
6 the Westfall case, Engelhard changed its
7 Research And Development's document retention
8 policy." Do you see that?

9 A. Yes.

10 Q. And underneath that, after the
11 objections, it says, "BASF admits that
12 Engelhard finalized a new document retention
13 policy in 1984."

14 Do you see that?

15 A. Yes.

16 Q. What was the document retention
17 policy before that, if you know?

18 MR. FARRELL: Objection to
19 form; foundation; vague.

20 BY MR. PLACITELLA:

21 Q. Well, let me ask you a question,
22 so maybe this will be easier.

23 A. Okay.

24 Q. Do you have a recollection of a

1 new document retention policy being arrived
2 at after the Westfall case was filed?

3 MR. FARRELL: Objection to
4 form.

5 THE WITNESS: I -- I don't know
6 about it with respect to after the
7 Westfall case was filed. I know that we
8 had an ongoing undertaking that took some
9 time to formulate a comprehensive
10 document retention policy for both
11 divisions of the company. My answer to
12 your previous question, I believe both
13 the Engelhard industry's division and the
14 minerals and chemicals division had their
15 own, not necessarily consistent policies.
16 And whatever policies those were, were
17 not enforced. Our recommend -- document
18 retention facility was basically a great
19 big wastebasket.

20 And under my instruction -- at
21 my instructions, Cahill prepared a
22 document retention policy that would be
23 consistent with all applicable laws and
24 regulations. It took some time. It was

1 also reviewed by Fish & Neave to ensure
2 that we were giving adequate protection
3 to intellectual property matters. And
4 it was finalized sometime in 1984.

5 BY MR. PLACITELLA:

6 Q. Okay. Do you have a recollection
7 that you did not come up with this document
8 retention policy, a final version, until
9 after the Westfall case was terminated?

10 MR. FARRELL: Objection to
11 form; foundation; asked and answered.

12 THE WITNESS: Well, I think you
13 told me it was -- that the Westfall
14 litigation was settled in '83, and this
15 was in '84, so I guess the answer is yes.

16 BY MR. PLACITELLA:

17 Q. What was the document retention
18 policy for the evidence in the Engelhard
19 research and development department
20 specifically related to the department that
21 was headed by Dr. Hemstock prior to 1984?

22 MR. FARRELL: Objection to form
23 and foundation.

24 THE WITNESS: Yeah, I don't

1 recall.

2 BY MR. PLACITELLA:

3 Q. And what was the document
4 retention policy that was arrived at
5 concerning the R&D department headed by
6 Dr. Hemstock in 1984?

7 MR. FARRELL: Same objections,
8 form and foundation.

9 THE WITNESS: I don't recall
10 the whole policy, but it was -- can
11 you -- if you can be more specific,
12 perhaps I can respond.

13 BY MR. PLACITELLA:

14 Q. Prior to 1984, was -- did your
15 policy permit the destruction of R and -- the
16 R&D files that were in Dr. Hemstock's
17 department?

18 MR. FARRELL: Objection to form
19 and foundation.

20 THE WITNESS: I don't know.

21 BY MR. PLACITELLA:

22 Q. Who would know that?

23 MR. FARRELL: Objection to form
24 and foundation.

1 THE WITNESS: You'd have to
2 look at the -- the -- the old policy for
3 the minerals and chemicals division.

4 BY MR. PLACITELLA:

5 Q. And with the new policy that was
6 arrived at in 1984, did it permit the
7 research and development information related
8 to Emtal talc to be destroyed that was in the
9 department of Dr. Hemstock?

10 MR. FARRELL: Objection to form
11 and foundation.

12 THE WITNESS: It called for the
13 destruction of files related to
14 discontinued operations of the company.

15 BY MR. PLACITELLA:

16 Q. All right. You -- but you didn't
17 answer my question. Did it permit you to
18 destroy the R&D files in Dr. Hemstock's
19 department related to Emtal talc?

20 MR. FARRELL: Objection to
21 form; foundation; asked and answered.

22 THE WITNESS: As a discontinued
23 operation, yes.

24 BY MR. PLACITELLA:

1 Q. Even if there were other cases
2 pending at the time?

3 MR. FARRELL: Objection.

4 BY MR. PLACITELLA:

5 Q. Even if there was litigation
6 pending at the time related to Emtal talc?

7 MR. FARRELL: Objection to form
8 and foundation.

9 THE WITNESS: There was a
10 general exception for pending litigation.

11 BY MR. PLACITELLA:

12 Q. So if there were cases pending in
13 1984, am I correct, in 1985, you would not be
14 permitted to destroy Engelhard Emtal talc
15 research and development files? True?

16 MR. TUNIS: Objection to form.

17 MR. FARRELL: Objection to
18 form; foundation; vague.

19 THE WITNESS: True.

20 BY MR. PLACITELLA:

21 Q. Did -- do you -- did you have an
22 understanding, as general counsel, of what
23 the concept of a litigation hold was?

24 A. A litigation hold is something

1 that we would institute upon the commencement
2 of a lawsuit, either by or against the
3 company, whereby we would suspend the
4 application of the new document retention
5 policy with respect to that subject area.

6 Q. Did you ever issue a litigation
7 hold as it related to the testing evidence
8 that was in the possession of the R&D
9 department headed by Dr. Hemstock concerning
10 Emtal talc?

11 MR. FARRELL: Objection to
12 form; foundation; vague as to time;
13 assumes facts.

14 THE WITNESS: I'm not aware of
15 any.

16 BY MR. PLACITELLA:

17 Q. What was your understanding of
18 the purpose of a litigation hold directive --

19 MR. TUNIS: Objection.

20 BY MR. PLACITELLA:

21 Q. -- in terms of a -- the policy at
22 your corporation?

23 MR. FARRELL: Objection to
24 form.

1 MR. TUNIS: Are -- are you
2 asking with respect to the specific 1984
3 policy?

4 BY MR. PLACITELLA:

5 Q. I'm asking what your
6 understanding was of the purpose of issuing a
7 litigation hold directive, generally?

8 A. It was to prevent the destruction
9 of documents that would be relevant to the
10 litigation in question.

11 MR. PLACITELLA: Okay. Okay.
12 Can you give me Exhibit 15. I have lots
13 of these, so...

14 BY MR. PLACITELLA:

15 Q. Okay. You have in front of you
16 Exhibit 15, which is a March 7th, 1984 memo
17 from G.A. Hemstock to all R&D personnel.

18 Do you see that?

19 A. Yes.

20 Q. Okay. And it talks about
21 document retrieval - discontinued operations,
22 correct?

23 A. Correct.

24 Q. Okay. This was issued prior to a

1 final document retention policy being arrived
2 at, correct?

3 MR. FARRELL: Objection to
4 form; foundation; misstates his
5 testimony.

6 THE WITNESS: I don't know what
7 the official date of implementation of
8 the document retention policy was.

9 BY MR. PLACITELLA:

10 Q. Did you have a role in drafting
11 this memo?

12 MR. MARINO: The document
13 retention policy?

14 MR. PLACITELLA: The doc --
15 this memo right here, document
16 retrieval - discontinued operations.

17 MR. MARINO: Thank you.

18 THE WITNESS: I don't recall.

19 BY MR. PLACITELLA:

20 Q. Okay. So if Dr. Hemstock
21 testified that you were the author of the
22 memo, does that refresh your recollection?

23 MR. MARINO: Objection to the
24 form of the question. Can you show him

1 that testimony by Dr. Hemstock?

2 MR. PLACITELLA: I can go dig
3 it out at lunchtime.

4 MR. MARINO: Well, I -- you
5 don't need to.

6 MR. BOYLE: We have it right
7 here.

8 MR. MARINO: I have it right
9 here.

10 MR. PLACITELLA: Okay.

11 MR. MARINO: So I'm looking at
12 page 34, lines -- line -- the question
13 begins on line 6.

14 MR. PLACITELLA: Well, hold on
15 for a second. Is this -- because let me
16 pull -- let me find it.

17 MR. MARINO: Yeah, please.

18 MR. PLACITELLA: Okay. What?

19 MS. CALLAHAN: Is that the tab?
20 Is that the tab?

21 MR. PLACITELLA: Uh-huh.

22 MS. CALLAHAN: Right there.

23 MR. PLACITELLA: Okay. No,
24 it's not the one. It's a different one.

1 Give me a second.

2 Why don't you give me your
3 page. I'm happy to read it.

4 MR. MARINO: You -- would you
5 like to read it?

6 MR. PLACITELLA: Well, I'm
7 happy to read it. Just tell me what you
8 want me to read.

9 MR. MARINO: It's highlighted.

10 MR. PLACITELLA: Just to cut
11 things shorter.

12 BY MR. PLACITELLA:

13 Q. Okay. Had you ever seen the
14 testimony from the Sampson case of
15 Dr. Hemstock?

16 MR. MARINO: Would you -- stop.

17 MR. PLACITELLA: I'm just --
18 I'm just asking --

19 MR. MARINO: Either -- either
20 do as I was going to do, which is what
21 you said you were going to do, or let me
22 do it. But don't go off into another --

23 MR. PLACITELLA: It's my
24 question, with all due respect to you,

1 okay.

2 MR. MARINO: I just -- I just
3 want you to ask him, because you made a
4 representation to him in a hypothetical
5 fashion that I think misstates the
6 testimony.

7 MR. PLACITELLA: I'm happy to
8 read it.

9 MR. MARINO: Please do.

10 MR. PLACITELLA: I'm just
11 asking him if he's ever seen it before.

12 MR. MARINO: Okay. Then
13 let's --

14 BY MR. PLACITELLA:

15 Q. Have you ever seen a deposition
16 of Dr. Hemstock in the Sampson case?

17 A. I -- I don't recall it.

18 Q. Okay.

19 A. I may have in the course of this.

20 Q. Okay. Now -- and I'll go back
21 and pull mine at -- at lunchtime but Mr. --

22 MR. MARINO: Well, I'm happy
23 to -- we -- we can -- we can let --
24 Chris, just --

1 MR. PLACITELLA: Let me just
2 read it.

3 MR. MARINO: If you want to
4 delay, you can do that. I'm not --

5 MR. PLACITELLA: Let me just
6 read it.

7 MR. MARINO: All right.

8 MR. PLACITELLA: Okay.

9 MR. MARINO: If you want to
10 delay and do it when you pull it out, do
11 it when you pull it out.

12 BY MR. PLACITELLA:

13 Q. Okay. Do you have any
14 recollection of having a role in drafting the
15 March 7th, 1984, memo?

16 A. No, I don't -- do not.

17 Q. Okay. Do you have any
18 recollection of anybody in your department
19 having a role --

20 MR. FARRELL: Objection to
21 form.

22 BY MR. PLACITELLA:

23 Q. -- in drafting that memo?

24 A. No.

1 Q. Okay. In the memo, did you --
2 let me ask this question, did you see this
3 memo before it went out?

4 MR. FARRELL: Objection to
5 form.

6 THE WITNESS: I don't know.

7 BY MR. PLACITELLA:

8 Q. Would a memo like this be able to
9 go out without your approval?

10 MR. FARRELL: Objection to
11 form.

12 MR. TUNIS: Objection.

13 MR. FARRELL: Foundation and
14 calls for speculation.

15 THE WITNESS: Glenn Hemstock
16 did not report to me and could issue a
17 memo to his people whenever he wanted to.

18 BY MR. PLACITELLA:

19 Q. So your -- your testimony is,
20 just to be clear, that Glenn Hemstock would
21 have been authorized to send a memo like this
22 without your approval?

23 A. I didn't say he would have been
24 authorized. I said he could have done it.

1 Q. Okay.

2 A. A memo like this, one would think
3 would be authorized by somebody in the legal
4 department.

5 Q. Okay. Is it your recollection
6 that a memo like this, as a matter of
7 practice and policy at Engelhard, could be
8 issued by Dr. Hemstock without approval from
9 the legal department?

10 MR. FARRELL: Objection to form
11 and foundation.

12 THE WITNESS: I think the key
13 is "as a matter of practice and policy."
14 It should not -- it would not be in
15 accordance with our policy for that to
16 happen. However, it is possible that a
17 department head would do something
18 without checking with the legal
19 department.

20 BY MR. PLACITELLA:

21 Q. Do you have any idea why the
22 department head would issue a memo like this
23 without checking with the legal department?

24 MR. FARRELL: Objection; form;

1 foundation.

2 MR. MARINO: Calls for
3 speculation.

4 MR. TUNIS: Mischaracterizes
5 testimony.

6 BY MR. PLACITELLA:

7 Q. Do you have any idea?

8 MR. FARRELL: Misstates his
9 testimony.

10 THE WITNESS: Oh, no.

11 BY MR. PLACITELLA:

12 Q. Okay. Now, in the second
13 paragraph, it says, "All information
14 contained in your files" -- and this was sent
15 to R&D, right -- "pertaining to these
16 operations," which included the Emtal talc
17 operation, correct?

18 A. Yes.

19 Q. Okay.

20 A. It says Emtal.

21 Q. -- "should be withdrawn and
22 placed in file boxes for discard.
23 Appropriate file boxes can be obtained from
24 Chuck Hachat at extension 5072."

1 Do you see that?

2 A. Yes.

3 Q. Who is Chuck Hachat.

4 A. Hachat.

5 Q. Hachat.

6 A. He was sort of the office
7 manager.

8 Q. Okay. And it says, "Please keep
9 these boxes in your office area, available
10 for pick up on March 16th, 1984."

11 Do you see that?

12 A. Yes.

13 Q. Okay. And then it talks about
14 the intent to retain copies.

15 Do you see that?

16 A. Yes.

17 Q. Okay. Now, do you have a
18 recollection of this happening, that the
19 documents were gathered up from the R&D
20 department pursuant to this memo?

21 MR. FARRELL: Objection to
22 form.

23 THE WITNESS: I don't have a
24 recollection specific to the R&D

1 department. I just know that there was a
2 corporate-wide effort to implement the
3 new policy. And to the extent that any
4 of the business groups required
5 assistance or help in understanding the
6 new policy, that they could call upon
7 the -- the help of the attorney assigned
8 to their group.

9 BY MR. PLACITELLA:

10 Q. Okay. It says here, "Please
11 understand that it is our intent to retain
12 copies of those documents to be preserved
13 from discontinued operations only in our
14 central files and can be accessed there
15 should the need arise."

16 Do you see that?

17 A. I see that.

18 Q. Who was in charge of central
19 files?

20 MR. FARRELL: Objection to
21 form; foundation.

22 THE WITNESS: I think, although
23 I'm not sure about at the time, but it
24 was probably a man named Al Viner,

1 V-I-N-E-R.

2 BY MR. PLACITELLA:

3 Q. Okay. And who did he work for?
4 Who was his direct -- what department was he
5 in?

6 A. He probably worked for Chuck
7 Hachat as part of the general office
8 administration group.

9 Q. And do you have a -- and did --
10 was he part of legal?

11 A. No.

12 Q. Do you have a recollection of any
13 of the R&D files collected in 1984 being
14 transferred to your department?

15 MR. FARRELL: Objection to form
16 and foundation.

17 THE WITNESS: I do not.

18 BY MR. PLACITELLA:

19 Q. Okay. Do you recall whether,
20 before a document could be discarded,
21 pursuant to your document retention policy,
22 whether those documents had to be reviewed by
23 anybody in legal?

24 MR. FARRELL: Objection to

1 form; foundation.

2 THE WITNESS: No.

3 BY MR. PLACITELLA:

4 Q. Okay. Before documents related
5 to research and development could be
6 discarded that were the subject of pending
7 litigation, would they have to be reviewed by
8 legal?

9 MR. FARRELL: Objection to form
10 and foundation.

11 MR. TUNIS: Objection; form.
12 Same.

13 THE WITNESS: If they were a
14 subject of pending litigation, they would
15 have been subject to a hold. And legal
16 would be involved in lifting that hold.

17 BY MR. PLACITELLA:

18 Q. So if there were cases pending
19 when this memo was issued, would the
20 documents first have to go to legal? If
21 there were -- let me rephrase the question.

22 If there were Emtal litigation
23 cases pending at the time of Dr. Hemstock's
24 memo, would those documents have to be first

1 sent to legal before that they could be
2 discarded?

3 MR. FARRELL: Objection to
4 form --

5 MR. TUNIS: Objection to form.

6 MR. FARRELL: -- foundation;
7 misstates Dr. Hemstock's memo.

8 THE WITNESS: I -- I can't
9 answer.

10 MR. PLACITELLA: Okay.

11 THE WITNESS: I -- I don't
12 know.

13 MR. PLACITELLA: Okay. What do
14 you -- how do you want to handle lunch?

15 MR. MARINO: Do you want to go
16 off?

17 MR. PLACITELLA: Yeah. Go
18 ahead.

19 THE VIDEOGRAPHER: The time is
20 now 12:01 p.m. We're going off the
21 record.

22 (Whereupon, there was a
23 discussion held off the record.)

24 (Whereupon, a lunch recess was

1 taken.)

2 THE VIDEOGRAPHER: The time is
3 now 1:07 p.m. We are back on the record.

4 MR. PLACITELLA: We're ready.
5 Kevin, are you ready?

6 MR. MARINO: I'm ready.

7 BY MR. PLACITELLA:

8 Q. Okay. So Mr. Marino was correct
9 before, that it -- it was actually BASF who
10 identified you.

11 Could you go to -- you have in
12 front of you Exhibit 41.

13 A. Uh-huh.

14 Q. And could you go to response No.
15 10 on page 11.

16 A. All right.

17 Q. Do you see where it says,
18 "Identify all persons and participants
19 involved in the development, drafting,
20 revising, dissemination, and execution of the
21 March 7, 1984 memorandum by Dr. Glen
22 Hemstock."

23 Do you see that?

24 A. Uh-huh. Yes.

1 Q. And do you see the response is --
2 BA -- after an objection, "BASF identifies:
3 Glen Hemstock; Arthur Dornbusch; Tom Halket;
4 and attorneys from Cahill Gordon."

5 Do you see that?

6 A. Yes.

7 Q. All right. Does that refresh
8 your recollection as to whether you were
9 involved in the drafting of the March 7th,
10 1984 memo we went over this morning?

11 A. No, it doesn't.

12 Q. It should have been marked
13 Exhibit 15.

14 A. No.

15 Q. All right. As you sit here
16 today, what is your testimony, were you
17 involved in -- I want to go through each one
18 specifically.

19 Did you have any role in the
20 development of the March 7th, 1984 memo?

21 MR. FARRELL: Objection to form
22 and foundation.

23 THE WITNESS: Not that I
24 recall.

1 BY MR. PLACITELLA:

2 Q. Okay. How about next, drafting?

3 MR. FARRELL: Same objections.

4 THE WITNESS: Same answer.

5 BY MR. PLACITELLA:

6 Q. Revising?

7 MR. FARRELL: Same objections.

8 THE WITNESS: No.

9 BY MR. PLACITELLA:

10 Q. Dissemination?

11 MR. FARRELL: Same objections.

12 THE WITNESS: No.

13 MR. MARINO: Please speak up
14 just a little bit, okay.

15 THE WITNESS: Yeah. Okay.

16 I -- I don't recall any of this.

17 BY MR. PLACITELLA:

18 Q. Or execution?

19 MR. FARRELL: Same objections.

20 THE WITNESS: No.

21 BY MR. PLACITELLA:

22 Q. Okay. Now, as it relates to

23 Dr. Hemstock, I think this is where

24 Mr. Marino was before, on page 35, he's

1 asked: "And Mr. Dornbusch was who?"

2 "He was head of the legal
3 department at the time."

4 "And he worked at Menlo Park?"

5 "He did."

6 "Do you know who physically
7 drafted this memo?"

8 "No I can't tell you who
9 physically drafted. I don't know."

10 "But the legal department
11 basically told you to send this memo out,
12 right?"

13 Answer: "Yes."

14 Now, I think before that, he
15 actually asked you something -- a question
16 about Mr. Dornbusch. Hold on for a second.
17 I got it. Hold on.

18 MR. FARRELL: What are you
19 reading from Chris? Is this Sampson?

20 MR. PLACITELLA: Yeah.

21 MR. FARRELL: This is Hemstock
22 in Sampson?

23 MR. PLACITELLA: Yeah. Well, I
24 don't have the page.

1 BY MR. PLACITELLA:

2 Q. So Mr. -- Mr. Marino was correct.

3 A. Uh-huh.

4 Q. Do you have any recollection of
5 legal telling you to send that -- legal
6 telling Dr. Hemstock to send out this memo?

7 MR. FARRELL: Objection to form
8 and foundation.

9 THE WITNESS: No.

10 BY MR. PLACITELLA:

11 Q. Okay. Now, do you have any
12 recollection of reviewing any of the
13 materials that were retrieved pursuant to the
14 March 7, 1984 memo?

15 MR. FARRELL: Objection to
16 form.

17 THE WITNESS: No.

18 BY MR. PLACITELLA:

19 Q. Did you -- or -- is it you don't
20 remember, it didn't happen, or what?

21 MR. FARRELL: Objection to
22 form.

23 THE WITNESS: I don't remember.

24 BY MR. PLACITELLA:

1 Q. Okay. And Dr. Hemstock, on
2 page 62 -- do you have that, Kevin?

3 MR. MARINO: I do.

4 BY MR. PLACITELLA:

5 Q. Okay. He's asked the following
6 question --

7 MR. BOYLE: What line?

8 MR. PLACITELLA: Fifteen.

9 BY MR. PLACITELLA:

10 Q. "After these documents were
11 retrieved pursuant to the March 7, 1984 memo,
12 where did they physically go?"

13 Answer: "I can't answer the
14 question except that they were sent to the
15 central storage, central storage repository
16 in the legal department, as best I know."

17 Question: "Who became the
18 custodian of those documents?"

19 Answer: "I would assume it
20 would be Mr. Dornbusch."

21 Do you see that?

22 A. I see it.

23 MR. PLACITELLA: All right. Is
24 there anything else you want me to read

1 that's connected to that? Because I see
2 you flipping through the pages furiously,
3 Kevin?

4 MR. MARINO: No. You know that
5 when I flip furiously --

6 MR. PLACITELLA: Okay.

7 MR. MARINO: -- it's a much
8 different look than this.

9 BY MR. PLACITELLA:

10 Q. Okay. So does that refresh your
11 memory as to whether you took possession of
12 the documents that were retrieved pursuant to
13 the March 7, 1984 memo?

14 A. No.

15 Q. Okay. Now -- fifty -- 57.

16 MR. MARINO: Thank you.

17 MR. FARRELL: Thank you.

18 BY MR. PLACITELLA:

19 Q. I've given you -- let me put it
20 up here for everybody to see -- Answers to
21 Interrogatories served on behalf of Engelhard
22 Corporation in the United States District
23 Court for the Eastern District of
24 Pennsylvania.

1 Do you see that?

2 A. Yes.

3 Q. Okay. And if you look at the
4 second to last page, do you see they're
5 certified by Charles Carter?

6 A. Yes.

7 Q. Okay. And he was an executive at
8 Engelhard, correct?

9 MR. FARRELL: Objection to
10 form.

11 THE WITNESS: Yes.

12 BY MR. PLACITELLA:

13 Q. Who selected Charles Carter to
14 verify the discovery responses?

15 A. I don't know. I don't recall.

16 Q. Okay. Now, if you go to No. 12,
17 which I believe is on page 11, it says,
18 "Identify all past and present officers,
19 agents, servants, employees, representatives,
20 consultants, expert witnesses, or independent
21 contractors of this defendant who have ever
22 testified or been deposed in connection with
23 any claim or a lawsuit for asbestos-related
24 disease or exposure."

1 Do you see that?

2 A. I see it, yes.

3 Q. And then it asks for copies of
4 the transcripts, et cetera.

5 Do you see that?

6 A. Yes.

7 Q. Do you see underneath that,
8 what's the answer?

9 A. None.

10 Q. Is that truthful?

11 MR. BOISE: Objection; form.

12 MR. FARRELL: Objection to form
13 and foundation.

14 BY MR. PLACITELLA:

15 Q. Is that accurate?

16 MR. BOISE: Same objections.

17 MR. MARINO: Wait. Can we
18 allow Mr. Dornbusch the opportunity to
19 review these.

20 MR. PLACITELLA: Absolutely.

21 MR. MARINO: Thank you.

22 THE WITNESS: I don't know.

23 BY MR. PLACITELLA:

24 Q. Do you --

1 A. I don't know.

2 Q. So here, the representation
3 that's being made by Engelhard, that no one
4 was ever deposed in any asbestos case,
5 correct?

6 MR. FARRELL: Objection to
7 form; foundation.

8 MR. MARINO: Just take your
9 time and review the document.

10 MR. FARRELL: It misstates the
11 document.

12 MR. MARINO: Please take your
13 time and review the document.

14 MR. FARRELL: Can I have the
15 question again, please.

16 THE WITNESS: Yeah. The
17 question was?

18 MR. PLACITELLA: I'll -- I'll
19 reframe it.

20 THE WITNESS: Okay.

21 BY MR. PLACITELLA:

22 Q. This does not mention the
23 depositions taken of the Engelhard
24 scientists, correct?

1 A. That --

2 MR. FARRELL: Objection to
3 form.

4 THE WITNESS: That is correct,
5 yes.

6 BY MR. PLACITELLA:

7 Q. All right. And they were clearly
8 known that they were taken to Engelhard at
9 the time that these Interrogatories were
10 answered, weren't they?

11 MR. FARRELL: Objection to
12 form.

13 BY MR. PLACITELLA:

14 Q. Engelhard knew that they were
15 deposed?

16 MR. FARRELL: Objection to
17 form; foundation.

18 MR. MARINO: It's -- and also
19 object to the form.

20 Can you clarify the question,
21 please, Chris.

22 BY MR. PLACITELLA:

23 Q. Engelhard was aware that
24 Dr. Hemstock, Dr. Triglia and Dr. Gale were

1 deposed and gave testimony under oath,
2 correct, at the time that these
3 Interrogatories were answered?

4 MR. FARRELL: Objection to form
5 and foundation.

6 THE WITNESS: Okay. Well, the
7 date of these was September 12, 1995.

8 MR. PLACITELLA: Right.

9 THE WITNESS: And the testimony
10 of Dr. Hemstock and Triglia was in 1984.
11 So it would appear to be inaccurate.

12 BY MR. PLACITELLA:

13 Q. Okay. Now, I'm going to show you
14 what's been marked Exhibit 57. Take your
15 time and take a look at it. And I --

16 MR. TUNIS: Chris, is this a
17 different set of Interrogatories?

18 MR. PLACITELLA: Yes, it is.
19 Let me identify them for the record.

20 MR. TUNIS: Yeah. Could you do
21 that, please.

22 MR. PLACITELLA: Sure. Good
23 point.

24 BY MR. PLACITELLA:

1 Q. These are Responses to
2 Interrogatories submitted to the Supreme
3 Court of the State of New York, in -- in Re:
4 New York City Asbestos Litigation, and
5 underneath that, the caption of Steven
6 Chernick.

7 Do you see that?

8 And if you go to No. 63 --
9 this was in 2002, correct?

10 A. This was apparently in April of
11 2002. And I see Interrogatory No. 63 and the
12 response to it appear to be similar to the
13 previous Interrogatory.

14 Q. And that's not accurate, is it?

15 MR. FARRELL: Objection to
16 form; foundation.

17 BY MR. PLACITELLA:

18 Q. It says here, "If any of your
19 employees or officers have testified" --

20 MR. FARRELL: Are you
21 withdrawing the last question?

22 MR. PLACITELLA: No. But he
23 already answered.

24 MR. FARRELL: He hasn't

1 answered the question. I was in the
2 middle of serving an objection.

3 MR. PLACITELLA: I'll withdraw
4 and ask that -- this question.

5 BY MR. PLACITELLA:

6 Q. It says, "If any of your
7 employees or officers have testified at trial
8 or by deposition or before any Congressional
9 Committee or administration agency concerning
10 asbestos exposure, pulmonary or
11 asbestos-related disease or industrial
12 hygiene relating to asbestos use."

13 Do you see that? And it says
14 if none -- no, right?

15 MR. FARRELL: Objection.

16 Which question are you on?

17 MR. PLACITELLA: Sixty-three.

18 THE WITNESS: Well, this
19 question talks about asbestos.

20 So before -- go ahead.

21 MR. PLACITELLA: He's answering
22 a question. Let him answer the question.

23 MR. FARRELL: No, I.

24 MR. PLACITELLA: You can't --

1 you can't interrupt in the middle of his
2 answer. Let him finish answering the
3 question.

4 MR. MARINO: He can interrupt
5 in the middle of his answer --

6 MR. FARRELL: I -- I --

7 MR. MARINO: -- to the extent
8 he wants to caution him --

9 MR. FARRELL: Not to waive --

10 MR. MARINO: Privileged
11 information.

12 MR. FARRELL: -- work product,
13 exactly.

14 Mr. Dornbusch is giving you
15 his opinion about a document that he's
16 never seen before in his former capacity
17 as general counsel for the company,
18 about whether information is or is not
19 responsive to requests, is calling for
20 the lawyer's opinion about responses to
21 requests in the context of litigation
22 and implicates work product. And that
23 was why I interrupted, because he was
24 about to offer his opinion as opposed to

1 factual information.

2 So I would instruct

3 Mr. Dornbusch not to offer his opinions

4 on these subjects because they are

5 protected by privilege and work product.

6 BY MR. PLACITELLA:

7 Q. I'll ask the question this way.

8 There's no mention in response to this

9 question about the deposition of Dr. Hemstock

10 where he talked about asbestos testing,

11 correct?

12 MR. FARRELL: Objection to form

13 and foundation.

14 MR. MARINO: You're just asking

15 him to read the answer and say what it

16 says?

17 BY MR. PLACITELLA:

18 Q. There's no mention in response to

19 the Interrogatory about Dr. Hemstock,

20 correct, and his testimony?

21 A. Correct.

22 Q. There's no mention about the

23 testimony given by Peter Gale and about how

24 his testing found asbestos in the Emtal talc,

1 correct?

2 MR. TUNIS: Objection.

3 MR. FARRELL: Objection to form
4 and foundation.

5 THE WITNESS: That's correct.

6 BY MR. PLACITELLA:

7 Q. There's no mention about the
8 deposition of Mr. -- Dr. Triglia, correct?

9 A. Correct.

10 MR. FARRELL: Same objections.

11 BY MR. PLACITELLA:

12 Q. Okay. Now, can you go to the
13 second page of the document.

14 Do you see under question one,
15 where it asks for the people answering the
16 Interrogatories?

17 A. I do.

18 Q. And who does it say answered the
19 Interrogatories?

20 A. Michael J. Hassett, associate
21 general counsel.

22 Q. He worked for you, correct?

23 A. Yes, he did.

24 Q. And Mr. Hassett would have had

1 access to the testing evidence, correct --

2 MR. FARRELL: Objection to
3 form; foundation.

4 BY MR. PLACITELLA:

5 Q. -- for asbestos in Emtal talc?

6 MR. FARRELL: Objection to
7 form; foundation; misstates the record;
8 assumes facts.

9 THE WITNESS: I do not recall
10 Mike Hassett being involved in connection
11 with the talc litigation or the talc
12 business. It's possible that he became
13 involved later at -- at the time of this
14 matter and was not aware of the
15 previous -- previous litigation.

16 BY MR. PLACITELLA:

17 Q. So Mr. Hassett -- who authorized
18 him at the corporation to answer the
19 Interrogatories on behalf of the corporation?

20 MR. FARRELL: Objection to form
21 and foundation. The witness has
22 testified he doesn't even recall Hassett
23 being involved in the litigation. How
24 would he know who authorized him to do

1 something in the litigation?

2 MR. PLACITELLA: That's a
3 speaking objection and not permitted
4 under the rules.

5 MR. FARRELL: We've been doing
6 this now for three hours.

7 MR. PLACITELLA: So could you
8 please -- could you please not do that.

9 MR. FARRELL: Objection to form
10 and foundation.

11 MR. PLACITELLA: Okay. Okay.
12 Because I will --

13 MR. FARRELL: Lacks foundation.

14 MR. PLACITELLA: -- take that
15 to the Court, okay. So I'd ask you to
16 comply with the rules and don't do that.
17 Okay? Apparently --

18 MR. FARRELL: I'd ask that you
19 lay a proper foundation for your
20 questions.

21 BY MR. PLACITELLA:

22 Q. Here's my foundation,
23 Mr. Dornbusch. Does the Interrogatory
24 answers that were submitted on behalf of your

1 corporation in fact indicate that Mr. Hassett
2 was supplying the information?

3 MR. FARRELL: Objection to form
4 and foundation.

5 MR. MARINO: Can you direct him
6 to the page of the Interrogatories where
7 it indicates that Mr. Hassett is
8 providing the information, please.

9 MR. PLACITELLA: Page 2.

10 MR. MARINO: Okay.

11 MR. PLACITELLA: State the full
12 name, address, telephone number, and
13 position of the corporate officer
14 answering these Interrogatories.

15 MR. MARINO: Right.

16 MR. PLACITELLA: Michael J.
17 Hassett, Esquire, associate general
18 counsel for Engelhard Corporation,
19 coordinated Engelhard's responses to the
20 standard set.

21 MR. MARINO: Right.

22 BY MR. PLACITELLA:

23 Q. Do you see that?

24 MR. MARINO: And everybody sees

1 it.

2 MR. PLACITELLA: I'm going --

3 I'm going --

4 MR. MARINO: My question to you
5 is, what are you gaining from asking
6 Mr. Dornbusch for hours to tell you what
7 these documents say? What is it -- what
8 does it -- how does it advance the ball
9 for you to ask this witness if, in fact,
10 where it says in an Interrogatory answer
11 that Mr. X provided the answers, it says
12 that Mr. X provided the answers. That's
13 my only -- I don't want to -- it's not a
14 speaking objection, just to add -- I'm
15 just trying to give you my --

16 MR. PLACITELLA: Is that
17 objection to form?

18 MR. MARINO: I'm trying to have
19 you understand the reason for it, because
20 maybe that could streamline things a
21 little.

22 MR. PLACITELLA: Right.

23 MR. MARINO: That's all.

24 And ask him the question.

1 It's not -- you know, he'll -- it will
2 be objected to or not objected to
3 according to form. He'll either be
4 directed to answer or not to answer, as
5 BASF determines.

6 But believe it or not, I'm --
7 I'm actually trying to facilitate rather
8 than impede. I just don't understand
9 what it adds.

10 BY MR. PLACITELLA:

11 Q. Do you know who Mr. Hassett -- so
12 today's -- well, let me ask you this
13 question. Today's the first day you ever
14 learned that Mr. Hassett, who worked for you
15 in the legal department, was involved in the
16 defense of the Emtal talc litigation?

17 MR. FARRELL: Objection to form
18 and foundation; misstates his testimony.

19 THE WITNESS: No. I -- I -- I
20 was not aware of today. I don't -- just
21 don't remember. Obviously, at the time,
22 I probably knew that he -- he was
23 involved. And I should also -- well,
24 okay. I'll just leave it at that.

1 BY MR. PLACITELLA:

2 Q. What -- do you understand what
3 his role was, his authorized role, for
4 coordinating Engelhard's responses to
5 standard discovery in the New York City
6 litigation?

7 MR. FARRELL: Objection to form
8 and foundation.

9 THE WITNESS: Well, other
10 than -- I mean, I would -- what you just
11 said, he was coordinating, pulling
12 together the facts to answer these
13 Interrogatories.

14 BY MR. PLACITELLA:

15 Q. Well, do you know what facts were
16 made available to him or what sources of
17 information were made available to him in
18 order to provide sworn answers to discovery?

19 MR. FARRELL: Objection to
20 form; foundation; calls for speculation.

21 THE WITNESS: And I don't know.

22 BY MR. PLACITELLA:

23 Q. Were the depositions of the
24 former Engelhard scientists who testified in

1 the Westfall case made available to him?

2 MR. FARRELL: Same objections;
3 calls for speculation.

4 THE WITNESS: I don't know.

5 BY MR. PLACITELLA:

6 Q. Did you understand that a
7 corporate off -- a lawyer working in your
8 department, when helping respond to
9 discovery, had an obligation to do a
10 reasonable investigation of the information
11 that was available to the corporation before
12 providing sworn answers?

13 MR. FARRELL: Objection to
14 form.

15 THE WITNESS: Yes.

16 BY MR. PLACITELLA:

17 Q. Okay. And do you know whether
18 either Cahill Gordon or yourself made the
19 Hem -- the Westfall file available to
20 Mr. Hassett in responding to these answers?

21 MR. FARRELL: Objection to form
22 and foundation; assumes facts; misstates
23 the record.

24 THE WITNESS: I don't know.

1 BY MR. PLACITELLA:

2 Q. Did you make available to
3 Mr. Hassett the testing evidence that was
4 found in your files that were -- that was the
5 subject of the Hyde memo?

6 MR. MARINO: Objection to that
7 question. That misstates the record.

8 MR. FARRELL: Objection to form
9 and foundation; misstates the record.

10 BY MR. PLACITELLA:

11 Q. I'll ask the question a different
12 way. You have P-1 here in front of you.

13 Did you make available to
14 Mr. Hassett any of the information that's
15 contained in P-1 which was the memo -- or
16 attached to the memo written to you by
17 Mr. Hyde concerning the testing evidence in
18 Emtal talc?

19 MR. MARINO: Objection to form;
20 misleading.

21 MR. FARRELL: Objection to form
22 and foundation; misstates the record and
23 assumes facts.

24 MR. PLACITELLA: Why don't you

1 state what the record is so we know.

2 MR. FARRELL: I'm happy to
3 state what the record is. This record is
4 that the witness so far has testified to
5 having no present recollection of Michael
6 Hassett being involved in the case at all
7 and no present recollection of the
8 document you've labeled P-1 being in his
9 file at any point in time, has never
10 before seen. And you haven't laid any
11 foundation for the witness having before
12 seen the Chernick Interrogatory
13 responses.

14 Moreover, we've been over and
15 over again on the fact that the document
16 was not in Mr. Dornbusch's possession at
17 this point in time. And you're now
18 asking layer upon layer of speculation
19 and assumed facts to a witness who
20 said -- you've -- you still have not
21 established any foundation for a single
22 question you've asked about this
23 document, that the witness has never
24 seen before, apparently.

1 MR. PLACITELLA: Okay.

2 MR. FARRELL: So that is what
3 the record is.

4 MR. PLACITELLA: Okay.

5 MR. FARRELL: You're now asking
6 misleading questions that are contrary to
7 the record to a witness who has no
8 personal knowledge of the answers you're
9 trying to elicit.

10 MR. PLACITELLA: Okay. Thank
11 you.

12 BY MR. PLACITELLA:

13 Q. Now, did you make this document
14 available to Mr. Hassett when he was
15 coordinating discovery responses in the New
16 York City litigation?

17 MR. FARRELL: Objection to
18 form; foundation; misstates the record;
19 assumes facts.

20 MR. MARINO: I join in all
21 those objections. That's not -- that's
22 not what the testimony has been, Chris,
23 in fairness.

24 MR. PLACITELLA: Okay. The

1 testimony will speak for itself.

2 MR. MARINO: Yes.

3 BY MR. PLACITELLA:

4 Q. Did you make this document
5 available to him?

6 MR. FARRELL: Same objections.

7 THE WITNESS: I don't know.

8 BY MR. PLACITELLA:

9 Q. Okay. Did you make any of the
10 testing evidence concerning asbestos in Emtal
11 talc available to Mr. Hassett in coordinating
12 discovery responses in the New York City
13 litigation?

14 MR. FARRELL: Same objections;
15 assumes facts.

16 THE WITNESS: I don't -- I
17 don't know. I don't -- I didn't even
18 recall, until you showed me this Exhibit
19 57, that there was a New York City
20 litigation.

21 MR. PLACITELLA: Can you give
22 me -- what was -- give me these.

23 BY MR. PLACITELLA:

24 Q. For the record, I'm just going to

1 identify them, and then I'll hand them to
2 everyone. Exhibit 108 is a January 22nd,
3 1990 letter to a Mr. Hobson from Eric Sarner.
4 Exhibit 121 is an April 23rd, 1990 letter
5 from Eric Sarner to Jim LaFevor. Exhibit 210
6 is a January (sic) 16th, 1991 letter from
7 Eric Sarner to David Shroyer. Exhibit 148 is
8 a November 18th, 2003 letter from Patrick
9 Newell to a Mr. Rudberg. I ask you to take a
10 look at these.

11 A. (The witness complies.) Okay.

12 Q. Okay. And all of those letters
13 talk about requesting dismissals of cases; is
14 that fair?

15 A. Yes.

16 MR. FARRELL: Objection to
17 form.

18 BY MR. PLACITELLA:

19 Q. Okay. And in all of those
20 letters, Mr. Fliegel, is cc'd, correct?

21 MR. FARRELL: Objection to
22 form; misstates the letters.

23 THE WITNESS: I did not -- I
24 did not check. The first one, Exhibit

1 148, does not name Fliegel. It names
2 Hassett, Peter Sloane and Mike Sullivan.

3 BY MR. PLACITELLA:

4 Q. You're correct about that.

5 A. He's named in Exhibit 210 and
6 123.

7 MR. MARINO: Just for clarity,
8 named, you mean copied on, right?

9 THE WITNESS: Copied on, yeah.
10 Copied in -- on 121 and 108.

11 BY MR. PLACITELLA:

12 Q. Okay. Now, do these letters
13 indicate to you that Cahill Gordon was
14 keeping Mr. Fliegel in -- up to speed in
15 terms of what was going on in the litigation?

16 MR. FARRELL: Objection to
17 form; foundation; calls for speculation.

18 MR. MARINO: Are -- just for
19 clarity, are you asking him if he has
20 some independent knowledge of that, or
21 are you asking him to read these letters,
22 see that Mr. Fliegel is copied on them,
23 and -- and into it -- the conclusion
24 that you suggested?

1 MR. PLACITELLA: Well, I'll ask
2 the first question.

3 MR. MARINO: Please.

4 BY MR. PLACITELLA:

5 Q. Do you know that -- are you aware
6 that Cahill Gordon was keeping Mr. Fliegel
7 informed as to what was going on in the
8 litigation?

9 MR. TUNIS: Objection to the
10 form.

11 THE WITNESS: I was not aware
12 of it until I -- I saw these exhibits.

13 BY MR. PLACITELLA:

14 Q. Okay. Did you -- Did you ever
15 authorize either one of your lawyers or
16 Cahill Gordon to seek dismissals on the basis
17 that there -- Emtal talc was asbestos free?

18 MR. FARRELL: Objection to
19 form; foundation.

20 Are you asking him whether
21 whether he gave that specific
22 instruction?

23 MR. PLACITELLA: The question
24 stands.

1 MR. FARRELL: Then I need to
2 assert attorney-client privilege and
3 instruct you not to answer it.

4 THE WITNESS: I'm not --

5 MR. FARRELL: You've been
6 instructed not to answer the question.

7 THE WITNESS: -- I'm going
8 to answer --

9 MR. MARINO: Just no response.

10 BY MR. PLACITELLA:

11 Q. Were you aware that the lawyers
12 who worked for you and Cahill Gordon were
13 seeking dismissal of talc cases based upon a
14 representation that there was no asbestos in
15 the Emtal talc?

16 MR. FARRELL: Objection to
17 form; foundation; assumes facts.

18 MR. BOISE: Misstates the
19 record.

20 THE WITNESS: I'm -- I don't
21 recall if I was or was not.

22 BY MR. PLACITELLA:

23 Q. Would that have been an accurate
24 representation?

1 MR. FARRELL: Objection to
2 form; foundation; work product; and
3 attorney-client privilege.

4 I instruct you not to answer
5 the question.

6 BY MR. PLACITELLA:

7 Q. I'm going to show you what's been
8 marked as Exhibit 5.

9 MR. MARINO: Thank you.

10 BY MR. PLACITELLA:

11 Q. Exhibit 5 is a -- an Affidavit
12 executed by William Ashton.

13 Have you ever seen that
14 Affidavit before?

15 MR. TUNIS: Chris, are you
16 going to flash this on the screen,
17 please.

18 MR. PLACITELLA: Okay.

19 BY MR. PLACITELLA:

20 Q. Do you see that?

21 A. Yes.

22 Q. Have you ever seen this before?

23 A. I don't know.

24 Q. Do you know who William Ashton

1 was?

2 A. I -- I wouldn't off the top of my
3 head. I see in the Affidavit that he was
4 employed by the Johnson & Johnson company.

5 Q. Do you have a recollection
6 whether you ever authorized your attorneys to
7 use the Ashton Affidavit to secure dismissals
8 of cases around the country?

9 MR. FARRELL: Objection to form
10 and foundation.

11 Can you answer that with a yes
12 or no, Mr. Dornbusch?

13 THE WITNESS: No.

14 MR. FARRELL: Do you know the
15 answer to the question?

16 THE WITNESS: No, I don't.

17 BY MR. PLACITELLA:

18 Q. Okay. I'm going to show you --
19 you have Dornbusch-2 in front of you? Are we
20 keeping these straight?

21 MR. BOISE: Is this log
22 excerpts?

23 MR. PLACITELLA: Yes.

24 BY MR. PLACITELLA:

1 Q. I'm going to -- I put in front of
2 you the Dornbusch-2, which was the privilege
3 log. And specifically, I'm looking at entry
4 195 and it looks like 572.

5 MR. MARINO: Can you give us
6 the date, by date, please.

7 MR. PLACITELLA: 4/28/89,
8 5/18/89, respectively. It's at the very
9 top of the page.

10 MR. MARINO: 4/28, and what's
11 the second one?

12 MR. PLACITELLA: 5/18.

13 MR. MARINO: Got it.

14 BY MR. PLACITELLA:

15 Q. This log addresses an exchange
16 between -- the first one, between yourself
17 and Mr. Sloane.

18 Do you see that?

19 A. Yes.

20 Q. And it talks about a letter
21 transmitting attorney-client communication
22 regarding the Ashton Affidavit?

23 A. I see that.

24 Q. And then 572 is an exchange

1 between Mr. Dembrow -- he worked for Cahill
2 Gordon?

3 A. Yes.

4 Q. -- okay, yourself, Mr. Fliegel
5 and Mr. Sloane.

6 Do you see that?

7 A. I do.

8 Q. And it's memo and attachments
9 transmitting the Ashton Affidavit.

10 Do you see that?

11 A. I do, yes.

12 Q. Does that refresh your
13 recollection as to whether you had ever seen
14 or known about the Ashton Affidavit being
15 used in litigation?

16 MR. FARRELL: Objection to form
17 and foundation.

18 THE WITNESS: No.

19 BY MR. PLACITELLA:

20 Q. Okay. Do you have Exhibit 41 in
21 front of you?

22 A. Yes.

23 Q. It's your Answers to
24 Interrogatories. Interrogatory No. 11 --

1 MR. TUNIS: Could you flash it
2 on the screen, please.

3 MR. PLACITELLA: I'm sorry. I
4 thought I did that.

5 BY MR. PLACITELLA:

6 Q. -- asks, "Identify all persons
7 and participants involved in the development,
8 drafting, revising, dissemination and
9 execution of the May 8th, 1989 affidavit of
10 Mr. William H. Ashton, (Attached as Ex. 4 to
11 Plaintiffs' Second Amended Class Action
12 Complaint)."

13 Do you see that?

14 A. Yes, I do.

15 Q. It says, after the objections,
16 "BASF states that Cahill attorneys, including
17 Peter Sloane and Ira Dembrow, drafted,
18 revised, and worked with William Ashton to
19 finalize and sign the May 8, 1989 affidavit
20 of William H. Ashton. Attorneys for Johnson
21 & Johnson also were involved. BASF further
22 states that, in addition to various other
23 materials that vary by case, Cahill attorneys
24 disseminated Mr. Ashton's May 8, 1989 at

1 various points in time while Cahill served as
2 national counsel in Engelhard personal injury
3 litigation from 1989 until the 2000s.

4 Did I read that correct so
5 far?

6 A. Yes.

7 Q. Okay. Now, I have some questions
8 about that.

9 Do you know -- were you aware
10 this was going on?

11 MR. MARINO: Objection to the
12 form of the question.

13 BY MR. PLACITELLA:

14 Q. That that -- were you aware that
15 this Affidavit was being drafted in
16 conjunction with Johnson & Johnson and then
17 being disseminated around the country?

18 MR. FARRELL: Objection to
19 form.

20 THE WITNESS: I don't remember.

21 BY MR. PLACITELLA:

22 Q. Do you know why Johnson & Johnson
23 was involved in drafting an Affidavit related
24 to the defense of your cases?

1 MR. FARRELL: Objection to the
2 form; foundation.

3 You may give a yes or no
4 answer to that.

5 THE WITNESS: No.

6 BY MR. PLACITELLA:

7 Q. Is this the first time that
8 you've learned that Johnson & Johnson was
9 involved in the defense of Emtal talc cases
10 on behalf of Engelhard?

11 MR. FARRELL: Objection to form
12 and foundation; misstates the record.

13 MR. MARINO: Join in that
14 objection.

15 THE WITNESS: I knew that the
16 mine had been purchased from Johnson &
17 Johnson. So I'm not surprised that they
18 might -- that they would have been
19 involved in the defense, but I don't
20 recall working with them.

21 BY MR. PLACITELLA:

22 Q. Okay. Can you go back to
23 Dornbusch-3. Oh, you don't have it. I'm
24 sorry.

1 Do you know who -- let me
2 just -- take a second to take a look at it.

3 A. (The witness complies.)

4 MR. FARRELL: What are we
5 looking at here?

6 MR. PLACITELLA: We are -- what
7 we have is an excerpt of the BASF
8 privilege log.

9 BY MR. PLACITELLA:

10 Q. So let me refer your -- you to
11 directly to the last two entries on the page.
12 Do you see where it states 7/18/1995, and
13 there's an exchange between yourself and a
14 Mr. O'Shaughnessy?

15 A. Well, there's -- O'Shaughnessy is
16 the author and it's -- the recipients are
17 listed as Les Fliegel, myself, and Peter
18 Sloane.

19 Q. Correct.

20 Do you know who
21 Mr. O'Shaughnessy was?

22 A. No.

23 Q. Okay. Do you know whether he was
24 counsel to Johnson & Johnson.

1 MR. FARRELL: Objection to form
2 and foundation.

3 THE WITNESS: I have no idea --
4 no information about that.

5 MR. PLACITELLA: Okay.

6 THE WITNESS: I would have
7 guessed he was a Cahill lawyer, but --

8 BY MR. PLACITELLA:

9 Q. Okay. So you don't know who he
10 is?

11 A. No.

12 Q. Okay. Do you know you -- well, I
13 want to go up to the third and -- to the
14 fourth -- the third and fourth entry. The
15 first date is 4/4/1989. And then there's
16 another entry from 4/4/89.

17 Do you see that?

18 A. Yes.

19 Q. Okay. And it -- and the subject
20 is, Memo providing legal analysis regarding
21 preparation of the Ashton Affidavit.

22 Do you see that?

23 A. Yes.

24 Q. Okay. And there is an exchange

1 between Mr. Dembrow and Mr. Sloane,
2 Mr. Sarner, and Mr. O'Shaughnessy.

3 Do you see that?

4 A. Yes.

5 Q. All right. Do you have any idea
6 what his role was, Mr. O'Shaughnessy, in --
7 in drafting of the Ashton Affidavit?

8 MR. FARRELL: Objection to
9 form; foundation.

10 THE WITNESS: No.

11 BY MR. PLACITELLA:

12 Q. Okay. Can you go back to
13 Dornbusch-2, please.

14 MR. FARRELL: Is that the other
15 priv log?

16 MR. PLACITELLA: Uh-huh. Yes.

17 BY MR. PLACITELLA:

18 Q. Can you go down to --

19 MR. TUNIS: That's on the
20 screen?

21 MR. PLACITELLA: Yep.

22 BY MR. PLACITELLA:

23 Q. -- the entry for 7/1/83.

24 MR. FARRELL: That's the date,

1 Chris?

2 MR. PLACITELLA: Yes.

3 BY MR. PLACITELLA:

4 Q. And that's --

5 A. On --

6 Q. -- it talks about --

7 MR. MARINO: On the second

8 page?

9 MR. PLACITELLA: Yes.

10 THE WITNESS: Okay.

11 BY MR. PLACITELLA:

12 Q. It talks about a letter and
13 attachment containing legal strategy
14 regarding tolling agreement in Westfall
15 litigation. And it's from Mr. Sloane to
16 yourself, Mr. Halket, Mr. Hyde, and Mr. Kohn.

17 Do you see that?

18 A. I do, yes.

19 Q. Do you have a recollection of
20 entering into a tolling agreement in the
21 context of the Westfall litigation?

22 MR. FARRELL: Objection to
23 form.

24 THE WITNESS: No.

1 BY MR. PLACITELLA:

2 Q. Okay. Did you ever enter into a
3 tolling agreement at any point in time with
4 Johnson & Johnson?

5 MR. FARRELL: Same objection.

6 THE WITNESS: I'm not aware of
7 it.

8 BY MR. PLACITELLA:

9 Q. Okay. Did you ever have any kind
10 of arrangement with Johnson & Johnson whereby
11 they would assist you with the defense if you
12 agreed not to sue them?

13 MR. FARRELL: Objection to the
14 form; foundation; privilege; common
15 interest privilege. I instruct him not
16 to answer the question.

17 MR. PLACITELLA: Okay. Give me
18 Exhibit 6.

19 BY MR. PLACITELLA:

20 Q. Exhibit 6 is an August 18th, 1989
21 Affidavit drafted by Charles Carter -- or
22 signed by Charles Carter?

23 A. Yes.

24 Q. And he was an Engelhard

1 executive?

2 MR. FARRELL: Object to the
3 form.

4 THE WITNESS: He was an
5 employee of Engelhard.

6 BY MR. PLACITELLA:

7 Q. Okay. And do you know who
8 authorized Charles Carter to sign this
9 Affidavit on behalf of Engelhard?

10 MR. FARRELL: Objection to form
11 and foundation.

12 THE WITNESS: No.

13 BY MR. PLACITELLA:

14 Q. Okay. Do you see on the -- do
15 you see where he says he does it based on his
16 personal knowledge under penalty of perjury?

17 A. Yes.

18 Q. Okay. And do you see the third
19 paragraph, where it says, "In addition,
20 Engelhard does not currently possess any
21 testing data other than the data provided to
22 you by way of the Ashton Affidavit and the
23 report of Dr. Pooley"?

24 Do you see that?

1 A. Yes.

2 Q. Is that an accurate statement --

3 MR. FARRELL: Objection.

4 BY MR. PLACITELLA:

5 Q. -- from your knowledge of what
6 was available to Engelhard --

7 MR. FARRELL: Objection to
8 form.

9 BY MR. PLACITELLA:

10 Q. -- in terms of testing data?

11 MR. FARRELL: Are you finished?

12 MR. PLACITELLA: Yeah.

13 MR. FARRELL: Object --
14 objection to form; foundation; calls for
15 speculation.

16 THE WITNESS: I don't know.

17 BY MR. PLACITELLA:

18 Q. Well, you had the testing data in
19 your possession, didn't you?

20 A. In 1989, I don't know.

21 MR. FARRELL: Same.

22 BY MR. PLACITELLA:

23 Q. Okay. So you don't know whether
24 this is an accurate statement or not?

1 A. I do not.

2 MR. FARRELL: Objection to
3 form; foundation; misstates the witness's
4 testimony.

5 MR. MARINO: The question also
6 misstates the record and is, in that
7 regard, a representation.

8 BY MR. PLACITELLA:

9 Q. I'm just asking you --

10 A. I -- I don't know.

11 Q. Okay. Based on what you knew
12 about the testing data that was in the
13 possession of Engelhard, would you have
14 authorized this Affidavit?

15 MR. FARRELL: Objection to
16 form; foundation; calls for speculation;
17 and misstates the record.

18 MR. MARINO: Objection;
19 misstates the record.

20 BY MR. PLACITELLA:

21 Q. You can answer.

22 A. It would depend on what -- what I
23 knew at the time. If I -- and what I had in
24 my possession at the time.

1 Q. Okay. Do you recall receiving a
2 copy of this Affidavit before it was sent
3 out?

4 MR. FARRELL: Objection to form
5 and foundation.

6 THE WITNESS: No.

7 BY MR. PLACITELLA:

8 Q. Okay. Can you go to Dornbusch-2
9 again, please. Let me direct your attention
10 to the entry on the privilege log, Number
11 1472, 8/18/89.

12 Do you see that?

13 A. Yes.

14 Q. That's the date that the
15 Affidavit was signed, correct?

16 A. Well, it was signed by that date.

17 Q. Well, it indicates on the
18 Affidavit that it was signed on 8/18/89,
19 correct?

20 A. No. It says it -- it's
21 transmitting this signed Affidavit.

22 Q. No. I'm sorry. We're talking --

23 A. It was signed on or before that
24 date.

1 Q. Do you see Mr. Carter's
2 signature?

3 A. Yes.

4 Q. That was what date?

5 A. August 18.

6 Q. 1989?

7 A. Yes.

8 Q. And this is -- according to this,
9 this is a letter, an attachment, transmitting
10 the signed Affidavit by Mr. Carter to you on
11 the exact same date, correct?

12 A. Correct.

13 Q. Did there ever come a time
14 shortly before you retired where you became
15 aware of evidence --

16 A. It's an ambulance.

17 Q. -- related to the Westfall case?

18 MR. FARRELL: Objection to form
19 and foundation.

20 Can you answer this with a yes
21 or no, Mr. Dornbusch, without getting
22 into the substance of any
23 communications?

24 THE WITNESS: Yes.

1 MR. FARRELL: Okay. What is
2 the answer?

3 THE WITNESS: The answer is
4 yes.

5 MR. FARRELL: Okay.

6 BY MR. PLACITELLA:

7 Q. And do you recall a case called
8 Martin?

9 A. No.

10 Q. Okay. If you go to Exhibit 41
11 and go to question No. 14. I'm sorry, it's
12 the wrong one.

13 MR. TUNIS: Chris, could you
14 identify or have the witness --

15 MR. PLACITELLA: Yeah, sure.

16 MR. TUNIS: -- identify what 41
17 is?

18 MR. PLACITELLA: Yeah,
19 absolutely.

20 MR. TUNIS: And put on the
21 screen the question that you are
22 referring to. Thank you.

23 BY MR. PLACITELLA:

24 Q. Okay. The -- Exhibit No. 41,

1 again, is the Interrogatory answers submitted
2 by BASF in this case. And Interrogatory No.
3 12 indicates, Identify all BASF personnel
4 knowledgeable about, or involved in, the
5 matter captioned as Martin vs. Uniroyal,
6 filed in the Superior Court of the State of
7 Rhode Island.

8 Do you see that?

9 A. No. 12?

10 MR. MARINO: Thirteen.

11 MR. PLACITELLA: Thirteen, my
12 fault.

13 THE WITNESS: Oh, 13.

14 MR. PLACITELLA: Yeah.

15 THE WITNESS: I see that, yeah.

16 Yes.

17 BY MR. PLACITELLA:

18 Q. Okay. And then, if you go to the
19 next page, after the objection it states that
20 BASF states that Engelhard employees Arthur
21 Dornbusch and Michael Hassett were aware of
22 the Martin case and communicated with the
23 Cahill attorneys who defended the case in the
24 Martin case.

1 Do you see that?

2 A. Yes.

3 Q. All right. Does that refresh
4 your memory as to whether you had knowledge
5 about the Martin case?

6 MR. FARRELL: Objection to form
7 and foundation.

8 THE WITNESS: It does -- no, it
9 does not --

10 MR. PLACITELLA: Okay.

11 THE WITNESS: -- refresh my
12 recollection.

13 BY MR. PLACITELLA:

14 Q. Had you ever learned from
15 Mr. Hassett that in the context of the case
16 that was pending in the 2004, 2005 time
17 frame, that a report of Dr. Glassley, who was
18 the plaintiff's expert in the Westfall case,
19 had surfaced?

20 MR. FARRELL: Objection to
21 form; foundation.

22 You're asking -- can I have
23 the question again, please.

24 (Whereupon, the court reporter

1 read back the record as requested.)

2 MR. FARRELL: Attorney-client
3 privilege, given that you're asking about
4 a communication between Mr. Dornbusch and
5 Mr. Hassett.

6 I instruct you not to answer
7 the question.

8 BY MR. PLACITELLA:

9 Q. Were you aware, in the 2004, 2005
10 time frame, that an expert who was prepared
11 to testify that there was asbestos in the
12 Johnson mine existed?

13 MR. FARRELL: Objection to form
14 and foundation.

15 THE WITNESS: I'm -- I don't
16 recall that.

17 BY MR. PLACITELLA:

18 Q. Okay. Do you recall at some
19 point in time Mr. Sullivan, at the Cahill
20 Gordon firm, locating copies of the
21 transcripts from the Westfall case?

22 MR. FARRELL: Objection to
23 form; foundation.

24 THE WITNESS: No.

1 BY MR. PLACITELLA:

2 Q. Okay. Were you ever made aware
3 that Engelhard settled the Martin case for
4 \$400,000 and required the report of
5 Dr. Glassley, where he indicated there was
6 asbestos found in the samples that he tested,
7 were required to be returned in exchange for
8 the \$400,000 payment?

9 A. No.

10 MR. FARRELL: Objection to
11 form; foundation; misstates the record.

12 Can you specify, made aware by
13 whom?

14 MR. PLACITELLA: Any source.
15 He said no.

16 MR. FARRELL: Are you including
17 lawyers in that source? Because the
18 question then implicates privilege
19 issues. Or do you want to rephrase it in
20 a way to get out of the communications?

21 MR. PLACITELLA: I think he
22 already answered it, frankly.

23 MR. FARRELL: Was it a no?

24 THE WITNESS: No.

1 MR. MARINO: Yes.

2 MR. PLACITELLA: Okay.

3 MR. FARRELL: Done.

4 BY MR. PLACITELLA:

5 Q. What information concerning the
6 Westfall case did you become aware of shortly
7 before you retired?

8 MR. FARRELL: Objection to
9 form; foundation; attorney-client
10 privilege; and work product.

11 I instruct you not to answer
12 the question.

13 BY MR. PLACITELLA:

14 Q. Okay. Did there come a point in
15 time --

16 (Whereupon, there was a brief
17 interruption.)

18 MR. PLACITELLA: Sorry. My
19 mother.

20 MR. MARINO: Do you want to
21 take a break?

22 MR. PLACITELLA: That's all
23 right.

24 MR. MARINO: Are you sure?

1 MR. PLACITELLA: Yeah.

2 MR. MARINO: For the record, I
3 just want to say that when my mother
4 calls, I take a break.

5 MR. PLACITELLA: Yeah. Well, I
6 will take a break in a second, because
7 it -- off the record.

8 (Whereupon, there was a
9 discussion held off the record.)

10 BY MR. PLACITELLA:

11 Q. At some point in time, there was
12 a hostile takeover bid for Engelhard by BASF;
13 is that correct?

14 A. Yes.

15 Q. Okay. And when was that?

16 A. I think it -- it began in
17 December of 2005.

18 Q. Okay. And what, if any, role did
19 you have in that circumstance?

20 MR. FARRELL: Objection to
21 form.

22 THE WITNESS: As company
23 counsel, I provided legal services and
24 advised to our management in responding

1 to the proposal.

2 BY MR. PLACITELLA:

3 Q. Okay. And did Engel -- did BASF
4 have its own representation in that
5 transaction?

6 MR. FARRELL: Objection to
7 form.

8 THE WITNESS: I'm -- I'm sure
9 they did. I --

10 MR. PLACITELLA: Okay.

11 THE WITNESS: -- don't recall
12 who it was.

13 BY MR. PLACITELLA:

14 Q. Did there ever come a time when
15 you had a face-to-face meeting with BASF
16 concerning the takeover?

17 MR. FARRELL: Objection to
18 form.

19 THE WITNESS: There were
20 several meetings, I believe.

21 BY MR. PLACITELLA:

22 Q. All right. And who was present
23 at those meetings?

24 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: There were a lot
3 of people. I couldn't tell you -- begin
4 to tell you everybody.

5 BY MR. PLACITELLA:

6 Q. Well, give me the people you
7 remember.

8 A. Well, there was our senior
9 management, Barry Perry, Mike Sperduto, our
10 CFO, myself, counsel -- we had outside -- we
11 had counsel from Cahill Gordon and also
12 counsel from -- oh, the -- we had retained
13 special counsel for the acquisition. Marty
14 Lipton's firm.

15 Q. Okay.

16 A. And I forget the name of his
17 partner who was working with us. And there
18 was also an associate whose name I don't
19 recall. That was on our side.

20 Then on -- on the BASF side,
21 there were a number of senior people from
22 Germany. I don't remember their names. But
23 all together, there were, I'd say, a couple
24 dozen people in the room.

1 Q. Okay. Any names you remember?

2 A. I know -- I remember Stryker.

3 And I always get his name confused with the
4 golf player. It wasn't Steve Stryker. What
5 was -- his first name --

6 Q. Was it David Stryker?

7 A. Yeah, David Stryker. He was
8 there. He was the lawyer. I don't -- I just
9 don't remember. I'm not very good with
10 names.

11 Q. Okay. Was this an arm's length
12 negotiation that was going on?

13 MR. MARINO: Objection.

14 MR. FARRELL: Objection; form
15 foundation.

16 THE WITNESS: Yes.

17 MR. PLACITELLA: Okay.

18 THE WITNESS: Yes.

19 BY MR. PLACITELLA:

20 Q. And the -- did you understand
21 that as part of the takeover, that you, as
22 corporate counsel, had an obligation to
23 disclose any significant litigation risks
24 that the company was facing at the time?

1 MR. FARRELL: Objection to
2 form.

3 THE WITNESS: Yes.

4 BY MR. PLACITELLA:

5 Q. Okay. And did you, in fact,
6 disclose any significant litigation risks
7 that the company was disclosing at the time?

8 MR. FARRELL: Objection to form
9 and foundation. If you can answer that
10 without disclosing the substance of any
11 such communications, if there were any.
12 So I think a yes or a no or I don't know.

13 THE WITNESS: Yes.

14 BY MR. PLACITELLA:

15 Q. You did disclose?

16 A. Yes.

17 Q. Did the subject of the Emtal tank
18 talc litigation come up?

19 MR. MARINO: Objection to form
20 and foundation.

21 BY MR. PLACITELLA:

22 Q. You can answer it.

23 A. Yes.

24 Q. Okay. And what was the context

1 of that coming up?

2 MR. FARRELL: Objection to form
3 and foundation. You mean the nature of a
4 meeting or something?

5 MR. MARINO: Could you rephrase
6 the question, please.

7 BY MR. PLACITELLA:

8 Q. Did you provide information
9 concerning the Emtal talc litigation?

10 MR. FARRELL: Objection to form
11 and foundation.

12 THE WITNESS: Yes.

13 BY MR. PLACITELLA:

14 Q. Okay. After the takeover
15 occurred, did BASF have the same information
16 in their possession as you had before the
17 takeover?

18 MR. FARRELL: Objection to form
19 and foundation.

20 BY MR. PLACITELLA:

21 Q. Concerning the Emtal talc
22 litigation?

23 MR. FARRELL: Same objections.

24 THE WITNESS: Yes.

1 BY MR. PLACITELLA:

2 Q. Did BASF understand the risks
3 that they were facing as it related to the
4 Emtal talc litigation prior to the actual
5 take over?

6 MR. MARINO: Oh, that -- that's
7 an improper question, Chris. How can you
8 ask him what someone else knew or
9 understood?

10 MR. PLACITELLA: To your
11 knowledge.

12 MR. FARRELL: Objection to form
13 and foundation.

14 The only way he could answer
15 the question is to implicitly disclose
16 the content of communications between
17 Engelhard and BASF about the litigation.
18 And it would reveal privileged
19 information for him to respond to the
20 question.

21 So I'm going to instruct him
22 not to answer the question because the
23 only other answer he can give is
24 speculative anyway.

1 BY MR. PLACITELLA:

2 Q. Did you, at the time, recognize
3 that there was a significant litigation risk
4 to Engelhard because of information relating
5 to asbestos in Emtal talc?

6 MR. FARRELL: Objection to
7 form; foundation; privilege; and work
8 product.

9 I instruct you not to answer
10 the question.

11 BY MR. PLACITELLA:

12 Q. At the time of the takeover, you
13 certainly had historical knowledge that
14 Engelhard scientists were deposed and gave
15 testimony about asbestos in Emtal talc,
16 correct?

17 MR. FARRELL: Objection to form
18 and foundation; vague as to time.

19 Is it -- can you answer that
20 with a yes or a no?

21 THE WITNESS: Yes.

22 MR. PLACITELLA: Okay.

23 THE WITNESS: Yes.

24 BY MR. PLACITELLA:

1 Q. Okay. And -- and at the time of
2 the takeover, you certainly had historical
3 knowledge about the information concerning
4 asbestos testing that was transmitted to you,
5 correct?

6 MR. FARRELL: Same objections
7 and same caution.

8 THE WITNESS: Yes.

9 BY MR. PLACITELLA:

10 Q. Okay. And after the takeover,
11 did BASF have that same knowledge?

12 MR. FARRELL: Objection to
13 form; foundation; calls for speculation;
14 privilege; and work product.

15 I instruct you not to answer
16 the question.

17 BY MR. PLACITELLA:

18 Q. After the takeover, were you
19 still an employee of BASF?

20 MR. FARRELL: Objection to
21 form.

22 THE WITNESS: I was. There was
23 a transition period of a month or so when
24 I was, I guess, an employee of BASF, yes.

1 BY MR. PLACITELLA:

2 Q. Okay. Now, do you know whether
3 Cahill Gordon at the time of the takeover --
4 who was there, by -- by the way, with you at
5 these negotiations from Cahill Gordon?

6 MR. FARRELL: Objection to
7 form.

8 MR. BOISE: And foundation.

9 THE WITNESS: The principal
10 lawyer was a man named Duffy. I -- I
11 want to say his first name was Phil. But
12 I may be confusing him with another Duffy
13 that I know. And I -- I'm sure there
14 were associates involved. I don't
15 recall.

16 BY MR. PLACITELLA:

17 Q. Okay. Am I correct that at the
18 time of the takeover, Cahill Gordon had
19 historical knowledge concerning the asbestos
20 testing of Emtal talc?

21 MR. BOISE: Object to the form;
22 foundation.

23 THE WITNESS: Yes.

24 BY MR. PLACITELLA:

1 Q. And am I correct that at the time
2 of the takeover, Cahill Gordon had historical
3 knowledge concerning the testimony provided
4 by Engelhard scientists under oath about the
5 asbestos testing of Emtal talc?

6 MR. BOISE: Object to the form
7 and foundation.

8 THE WITNESS: Yes.

9 BY MR. PLACITELLA:

10 Q. Am I correct that after the
11 takeover, Cahill Gordon continued to
12 represent BASF in the Emtal talc litigation?

13 MR. FARRELL: Objection to
14 form.

15 THE WITNESS: I don't know.
16 I've seen something, somewhere in the
17 paper you've shown me today that suggest
18 that that is so. But I don't -- didn't
19 know of my own knowledge.

20 BY MR. PLACITELLA:

21 Q. Okay. What is it that you told
22 BASF about the risks related to the Emtal
23 talc litigation at the time of the
24 takeover --

1 MR. FARRELL: Objection to
2 form.

3 BY MR. PLACITELLA:

4 Q. -- but before you went to work
5 for them?

6 MR. FARRELL: Objection to
7 form; foundation; privilege; work
8 product.

9 I instruct you not to answer
10 the question; common interest privilege.

11 MR. PLACITELLA: What is the
12 basis for the work product assertion?

13 MR. FARRELL: You're asking a
14 lawyer for the company to talk about his
15 assessment of active and pending
16 litigation and communications between him
17 and BASF, which then came to acquire the
18 same company, about the status and his
19 assessment of that litigation. So I've
20 asserted objections based on work
21 product, attorney-client privilege, and
22 the common interest privilege. And I've
23 instructed him not to answer the
24 question.

1 BY MR. PLACITELLA:

2 Q. Okay. During the time that you
3 worked for Engelhard, was the board of
4 directors aware of the testimony of Engelhard
5 scientists under oath in the Westfall case?

6 MR. FARRELL: Objection to form
7 and foundation.

8 THE WITNESS: I don't know.

9 BY MR. PLACITELLA:

10 Q. Okay. When the conversations
11 occurred concerning the litigation risks
12 related to Emtal talc, who was present?

13 MR. FARRELL: Objection to form
14 and foundation.

15 BY MR. PLACITELLA:

16 Q. I'm talking about at the time of
17 the takeover.

18 MR. FARRELL: Same objections.

19 THE WITNESS: There were
20 several conversations. One was the large
21 group that I mentioned before. There was
22 then a smaller meeting consisting of only
23 attorneys and the control group people to
24 talk specifically about litigation.

1 Present at that meeting were Mr. Stryker,
2 a member of his staff, whose name I don't
3 recall, someone from my staff, I'm not --
4 I don't recall who it was, David Wexler,
5 who was our -- in charge of mergers and
6 acquisitions for the company. We -- our
7 CFO may or may not have been there. I
8 don't recall.

9 BY MR. PLACITELLA:

10 Q. Did the historic information you
11 had on the asbestos in Emtal talc impact your
12 assessment of the litigation risk associated
13 with that litigation?

14 MR. FARRELL: Objection to form
15 and foundation.

16 THE WITNESS: I -- I don't
17 understand your question.

18 BY MR. PLACITELLA:

19 Q. Sure.

20 Did the historical information
21 that you had in the -- concerning the testing
22 of asbestos enter into your risk assessment
23 when communicating as part of the takeover
24 what the risks were related to litigation

1 involving Engelhard?

2 MR. FARRELL: Objection to
3 form; foundation; misstates the record;
4 privileged; work product; common interest
5 privilege.

6 I instruct you not to answer
7 the question.

8 BY MR. PLACITELLA:

9 Q. Okay. Did you believe that after
10 the takeover was complete, you had exercised
11 your duty to disclose to BASF all of the
12 litigation risks that you thought would
13 materially -- could materially affect the
14 corporation?

15 MR. MARINO: Objection to the
16 form of the question.

17 MR. FARRELL: Objection to form
18 and foundation.

19 Can you answer that?

20 THE WITNESS: Yes.

21 BY MR. PLACITELLA:

22 Q. Did you ever reach the conclusion
23 that the information concerning the asbestos
24 content in Emtal talc created a material risk

1 to the corporation?

2 MR. FARRELL: Objection to
3 form; foundation; privilege; work
4 product.

5 I instruct you not to answer
6 the question.

7 BY MR. PLACITELLA:

8 Q. Did you ever come to the
9 conclusion that the deposition testimony of
10 the Engelhard scientists given under oath
11 concerning the asbestos in Emtal talc created
12 a material risk to the corporation?

13 MR. FARRELL: Same objection;
14 same instruction not to answer.

15 BY MR. PLACITELLA:

16 Q. And who did you meet with in
17 order to prep for today's deposition?

18 A. My counsel.

19 Q. The ever good-looking Mr. Marino?

20 A. And --

21 Q. Mr. Boyle?

22 A. And Mr. Boyle, yes.

23 Q. Okay. Did you review any
24 materials or documents in preparation?

1 A. No.

2 MR. PLACITELLA: Okay. Can you
3 give me Exhibit No. 14.

4 Kevin.

5 BY MR. PLACITELLA:

6 Q. Exhibit No. 14 is a report
7 authored by Dr. William Glassley entitled
8 Summary of Activities Related to Services
9 rendered for Decof and Grimm in the case of
10 David H. Westfall versus Whittaker, Clark and
11 Daniels, et al.

12 Do you see that?

13 A. Yes.

14 Q. Okay. Can you go to the fifth
15 page of the report, where it says conclusion.
16 It states, Asbestiform chrysotile occurs in
17 serpentine intermingled with the talc at the
18 Johnson mine. Its overall abundance could
19 not be established.

20 Do you see that?

21 A. Yes.

22 Q. Were you ever -- were you aware
23 of this report at any point in time?

24 MR. FARRELL: Objection to

1 form.

2 THE WITNESS: Not that I
3 recall.

4 BY MR. PLACITELLA:

5 Q. Okay. Did anybody -- if a report
6 like this came in in the context of a case,
7 did it have to be, as a matter of practice,
8 disclosed to you?

9 MR. FARRELL: Objection to form
10 and foundation; calls for speculation.

11 THE WITNESS: Well, the -- I --
12 I think the technical answer to your
13 question is no. But a lot would depend
14 upon the circumstances under which the --
15 the report was compiled.

16 BY MR. PLACITELLA:

17 Q. Okay. Such -- such as what?

18 A. If it was done at the request of
19 somebody in the legal department or outside
20 counsel, then I would expect that when it
21 came to the company, I would be on the
22 distribution.

23 Q. Okay. And if it came from an
24 expert on the plaintiff's side in a

1 litigation, this is something that you would
2 be apprized of?

3 MR. FARRELL: Same objections;
4 calls for speculation.

5 THE WITNESS: Yeah. If it were
6 deemed by counsel to be of significance,
7 I would -- would expect that I would be
8 told about it.

9 BY MR. PLACITELLA:

10 Q. Okay. And here it talks about
11 chrysotile being found in the Johnson mine.

12 Do you see that?

13 A. Yes.

14 Q. Did you have an understanding
15 whether that was, in fact, the case, that
16 there was chrysotile asbestos in the Johnson
17 mine?

18 MR. FARRELL: Objection; form
19 and foundation.

20 THE WITNESS: I had no -- no
21 information about that.

22 BY MR. PLACITELLA:

23 Q. At any point in time?

24 MR. FARRELL: Same objections.

1 THE WITNESS: In 2000 -- in
2 1982, I did not.

3 BY MR. PLACITELLA:

4 Q. Okay. At some point in time, did
5 you learn that there was chrysotile asbestos
6 in the Johnson mine?

7 MR. FARRELL: Same objections.

8 THE WITNESS: I can't answer
9 that question without breaching the
10 attorney-client privilege.

11 MR. FARRELL: I instruct you
12 not to answer further.

13 THE WITNESS: Okay.

14 MR. FARRELL: Can we take a
15 break at some point?

16 MR. PLACITELLA: Yeah. Sure.
17 Now's fine.

18 THE VIDEOGRAPHER: The time is
19 now 2:31 p.m. We're going off the
20 record.

21 (Whereupon, there was a
22 discussion held off the record.)

23 (Whereupon, a brief recess was
24 taken.)

1 THE VIDEOGRAPHER: The time is
2 now 2:53 p.m. We are back on the record.

3 BY MR. PLACITELLA:

4 Q. Okay. During the time that you
5 were general counsel and corporate secretary
6 to Engelhard, did you know that there were
7 cases being dismissed based upon the
8 representation that there was no asbestos in
9 Emtal talc?

10 MR. FARRELL: Objection to form
11 and foundation; misstates the record.

12 MR. MARINO: Are you
13 representing to him that that was the
14 basis for dismissals?

15 MR. PLACITELLA: I'm asking him
16 a question.

17 MR. MARINO: Thank you.

18 THE WITNESS: No.

19 BY MR. PLACITELLA:

20 Q. Okay. During the time that you
21 were general counsel and corporate secretary,
22 were -- did you ever become aware that cases
23 were being dismissed based upon the
24 representation that there was no evidence of

1 asbestos in Emtal talc?

2 MR. MARINO: Are you making the
3 representation to him?

4 MR. PLACITELLA: I'm just
5 asking him a question.

6 MR. FARRELL: Same -- same
7 objections.

8 Can you answer these questions
9 without accessing the content of
10 communications between yourself and
11 Cahill Gordon? In other words, do you
12 have firsthand knowledge of these
13 questions at all, or would you have to
14 draw on the content of communications
15 between yourself and other lawyers for
16 the company?

17 THE WITNESS: The latter.

18 MR. FARRELL: Then I need to
19 instruct you not to answer the questions
20 on privilege grounds.

21 BY MR. PLACITELLA:

22 Q. Okay. Do you have any
23 information that cases brought against
24 Engelhard for exposure to Emtal talc were

1 settled under value based upon assertions
2 that there was no asbestos in Emtal talc?

3 MR. FARRELL: Same objection;
4 same instruction not to answer the
5 question.

6 BY MR. PLACITELLA:

7 Q. Do you know whether Engelhard,
8 the company, was aware that cases were being
9 dismissed based upon the assertion by
10 Engelhard's lawyers that there was not
11 asbestos in Emtal talc?

12 MR. FARRELL: Same objection;
13 same instruction not to answer.

14 BY MR. PLACITELLA:

15 Q. Do you know whether the Johnson
16 mine, which was owned by Engelhard, contained
17 asbestos?

18 MR. FARRELL: Objection to form
19 and foundation.

20 I believe you said a few
21 minutes ago, Mr. Dornbusch, in response
22 to a similar question that you couldn't
23 answer that question without disclosing
24 privileged information. So I want to

1 confirm whether you can answer that
2 question without revealing privileged
3 information as opposed to something you
4 would know from independent knowledge.

5 THE WITNESS: No, your
6 recollection is correct. Any information
7 of that kind was privileged.

8 BY MR. PLACITELLA:

9 Q. Okay. Do you know whether the
10 Johnson mine, which was owned by Engelhard,
11 was contaminated with asbestos?

12 MR. FARRELL: Same objection
13 and same caution to you, Mr. Dornbusch.

14 THE WITNESS: Right. And the
15 same answer.

16 BY MR. PLACITELLA:

17 Q. Do you know the answer to the
18 question?

19 MR. FARRELL: Can you answer it
20 one way or the other? Do you know the
21 answer?

22 THE WITNESS: I'm not sure --
23 I -- I can't -- I can't answer it without
24 relying upon attorney-client privileged

1 information. And I would -- I would need
2 to -- to seek further clarification of
3 the question.

4 BY MR. PLACITELLA:

5 Q. Were you ever made aware or do
6 you know whether Engelhard had a program of
7 x-raying the employee -- its employees at the
8 Johnson mine, having x-rays of their lungs
9 done?

10 A. I do not know that.

11 Q. Do you know whether the evidence
12 of x-rays of Johnson mine employees was ever
13 disclosed to Engelhard's insurance carriers?

14 MR. FARRELL: Objection to
15 form; foundation.

16 THE WITNESS: No.

17 BY MR. PLACITELLA:

18 Q. Okay. Were executives -- or
19 strike that.

20 Was management at Engelhard
21 aware that the Johnson mine owned by
22 Engelhard contained asbestos?

23 MR. FARRELL: Objection to form
24 and foundation.

1 BY MR. PLACITELLA:

2 Q. If you know.

3 MR. FARRELL: Mr. Dornbusch,
4 can you answer this question without
5 revealing the substance of
6 attorney-client communications --

7 THE WITNESS: No.

8 MR. FARRELL: -- communications
9 you've had with management or some other
10 lawyers had with management?

11 THE WITNESS: No.

12 MR. FARRELL: Then I instruct
13 you not to answer the question on
14 privilege grounds.

15 BY MR. PLACITELLA:

16 Q. Would you be able to answer the
17 question but for privilege?

18 A. I'm not sure.

19 Q. Okay.

20 A. I'd have to hear the question
21 again.

22 Q. Okay. Was Engelhard management
23 aware that the Ental products made from the
24 Johnson mine contained asbestos?

1 MR. FARRELL: Same objection
2 and same caution.

3 Can you answer this without
4 revealing the substance of
5 attorney-client communications?

6 THE WITNESS: No.

7 MR. FARRELL: I instruct you
8 not to answer the question.

9 BY MR. PLACITELLA:

10 Q. While the Westfall case was
11 pending, did Engelhard's management have
12 reason to believe that other similar cases
13 would be filed in the future?

14 MR. FARRELL: Objection to
15 form; foundation; privilege; work
16 product.

17 I instruct you not to answer
18 the question.

19 BY MR. PLACITELLA:

20 Q. Do you know whether Engelhard
21 management had reason to believe, while the
22 Westfall case was pending, whether future
23 similar cases were likely?

24 MR. FARRELL: Are you just

1 asking whether he knows the answer to the
2 question?

3 MR. PLACITELLA: Yeah.

4 THE WITNESS: I don't know.

5 BY MR. PLACITELLA:

6 Q. Okay. During the pendency of the
7 Westfall case, were you aware that the
8 Johnson mine owned by Engelhard contained
9 asbestos?

10 MR. FARRELL: Same objections;
11 same instruction. We just had this
12 question a few minutes ago.

13 MR. PLACITELLA: Different
14 question.

15 MR. FARRELL: Can you answer
16 this question without revealing the
17 substance were attorney-client
18 communications, Mr. Dornbusch?

19 THE WITNESS: No.

20 MR. FARRELL: I instruct you
21 not to answer.

22 BY MR. PLACITELLA:

23 Q. Did you ever form the
24 understanding that Engelhard would be

1 repeatedly sued in Emtal talc litigation?

2 MR. FARRELL: Objection to
3 form; foundation; work product;
4 privilege.

5 I instruct you not to answer
6 the question.

7 BY MR. PLACITELLA:

8 Q. At any point in time, did you
9 make sure that the information concerning the
10 testimony of Engelhard scientists concerning
11 asbestos in Emtal talc was disclosed to
12 litigants who had sued Engelhard claiming
13 personal injury from Emtal talc?

14 MR. FARRELL: Can you repeat
15 the question, please.

16 (Whereupon, the court reporter
17 read back the record as requested.)

18 MR. FARRELL: Objection to
19 form; foundation; assumes facts;
20 misstates the record.

21 BY MR. PLACITELLA:

22 Q. You can answer.

23 A. No.

24 Q. Okay. At any point in time,

1 did -- as general counsel in charge of all
2 litigation, did you do anything to ensure
3 that litigants who were suing Engelhard
4 alleging personal injury from Emtal talc were
5 made aware of the testing information in
6 possession of Engelhard concerning asbestos
7 in Emtal talc?

8 MR. MARINO: Objection to the
9 form of the question.

10 MR. FARRELL: Objection to
11 form; foundation; assumes facts;
12 misstates the record.

13 THE WITNESS: No.

14 BY MR. PLACITELLA:

15 Q. Okay. What was your
16 understanding of the obligation of Thomas
17 Halket to disclose the information that he
18 had concerning the testimony of Engelhard
19 scientists in cases that he was involved in?

20 MR. BOISE: Objection to form.

21 MR. FARRELL: Objection to form
22 and foundation.

23 THE WITNESS: I -- I don't --
24 yeah, I don't -- don't recall what it

1 was.

2 BY MR. PLACITELLA:

3 Q. You don't recall what it was?

4 A. What -- right.

5 Q. I'm sorry?

6 A. I don't recall what my
7 understanding was as to Mr. Halket's
8 obligations at that time.

9 Q. Okay. Did you have an
10 expectation that if the lawyers who were
11 working for you had information indicating
12 there was asbestos in Emtal talc, that that
13 would be disclosed to litigants who were
14 requesting that information?

15 MR. TUNIS: Objection to form.

16 MR. FARRELL: Objection to form
17 and foundation; calls for speculation.

18 THE WITNESS: I don't -- I
19 don't recall thinking about that issue.

20 BY MR. PLACITELLA:

21 Q. Okay. Would you have ever
22 countenanced the destruction of samples used
23 for testing Emtal talc while cases were
24 pending involving exposure to Emtal talc?

1 MR. TUNIS: Objection to form.

2 MR. FARRELL: Objection to form
3 and foundation.

4 MR. BOISE: Incomplete
5 hypothetical.

6 THE WITNESS: Would I have
7 countenanced?

8 MR. PLACITELLA: Yes.

9 THE WITNESS: No.

10 BY MR. PLACITELLA:

11 Q. Would you have ever authorized
12 the destruction of evidence related --
13 underlying evidence relating to the testing
14 of Emtal talc during the time when cases were
15 pending, alleging exposure to Emtal talc?

16 MR. FARRELL: Objection to form
17 and foundation.

18 MR. TUNIS: Objection to form.

19 THE WITNESS: No.

20 BY MR. PLACITELLA:

21 Q. Okay. Do you know whether Cahill
22 Gordon was aware that the Johnson mine owned
23 by Engelhard contained asbestos?

24 MR. FARRELL: Objection to

1 form; foundation.

2 Can you answer this question
3 without getting into the substance of
4 communications between yourself and
5 Cahill Gordon?

6 THE WITNESS: No.

7 MR. FARRELL: Then I instruct
8 you not to answer the question on
9 privilege grounds.

10 BY MR. PLACITELLA:

11 Q. Do you agree with me that during
12 the pendency of the Westfall case, Cahill
13 Gordon would have received full and complete
14 copies of the depositions of Hemstock,
15 Triglia, and Gale?

16 MR. FARRELL: Objection to
17 form; foundation.

18 THE WITNESS: I would expect
19 that they would have, yes.

20 BY MR. PLACITELLA:

21 Q. Okay. And did you have an
22 expectation that Cahill Gordon, whom you
23 indicated you outsourced the defense of the
24 Emtal litigation to, would have disclosed the

1 information they had concerning the asbestos
2 testing in Emtal talc to litigants who were
3 suing Engelhard alleging injury from that
4 exposure?

5 MR. TUNIS: Objection.

6 MR. FARRELL: Objection to
7 form; foundation; misstates the record;
8 calls for speculation.

9 THE WITNESS: I don't recall if
10 I had such an expectation or not.

11 BY MR. PLACITELLA:

12 Q. Did you understand that the rules
13 of professional conduct required candor in
14 the disclosure of evidence to litigants in
15 possession of Engelhard?

16 MR. FARRELL: Objection to form
17 and foundation.

18 THE WITNESS: I don't recall
19 what I understood about -- at that time.

20 BY MR. PLACITELLA:

21 Q. Okay. Did -- do you have an
22 understanding of what the duty of candor is?

23 A. Yes, I do.

24 Q. And what is that?

1 A. Well, I -- I would say it's
2 basically honesty.

3 Q. Okay. And do you believe that
4 the lawyers for Engelhard had a duty of
5 honesty to provide the people who they were
6 litigating against with the information
7 concerning the testing of asbestos of Emtal
8 talc if it was requested?

9 MR. FARRELL: Objection to
10 form; foundation; misstates the record;
11 calls for speculation.

12 MR. BOISE: Incomplete
13 hypothetical.

14 THE WITNESS: I --

15 MR. MARINO: And what would be
16 the significance if he said no?

17 BY MR. PLACITELLA:

18 Q. You can answer.

19 A. I had an expectation that the
20 lawyers at Cahill, as the -- as with the
21 other lawyers that Engelhard had retained
22 from time to time, would conduct themselves
23 strictly in accordance with the code of
24 professional responsibility.

1 Q. And would that be -- include
2 being honest about what information was
3 available concerning the asbestos content of
4 Emtal talc?

5 MR. FARRELL: Objection to
6 form; foundation; misstates the record;
7 calls for speculation.

8 MR. BOISE: It's an incomplete
9 hypothetical.

10 THE WITNESS: I -- I believe
11 so.

12 BY MR. PLACITELLA:

13 Q. Okay. Did you have an
14 understanding that when the document
15 retention policy was finalized in 1984, that
16 if research and development evidence was
17 disposed of concerning -- in accordance with
18 that policy, that information would not be
19 available to litigants?

20 MR. TUNIS: Objection to form.

21 MR. FARRELL: Objection. Can I
22 have the question again, please.

23 (Whereupon, the court reporter
24 read back the record as requested.)

1 MR. FARRELL: Are you asking,
2 Chris, whether he had that specific
3 thought in 1984?

4 MR. PLACITELLA: I'm ask -- my
5 question stands.

6 MR. FARRELL: Well, I'm trying
7 to understand the question, because one
8 interpretation of it calls for privileged
9 and work product information --

10 MR. PLACITELLA: Okay.

11 MR. FARRELL: -- I would need
12 to instruct him not to answer. So I'm
13 asking you to clarify the question.

14 MR. PLACITELLA: No. My
15 question stands. Can you read it back,
16 please.

17 (Whereupon, the court reporter
18 read back the record as requested.)

19 MR. FARRELL: Well, in light of
20 plaintiff's refusal to clarify the
21 question as requested, I need to instruct
22 you not to answer the question based on
23 privilege and work product grounds.

24 BY MR. PLACITELLA:

1 Q. Okay. Am I correct that you have
2 no evidence, as you sit here today, that
3 after the document retention policy was
4 arrived at in 1984, as you testified to, that
5 the research and development information
6 concerning the testing of Emtal talc was ever
7 disclosed to a single litigant?

8 MR. TUNIS: Objection to form.

9 MR. FARRELL: Objection to form
10 and foundation.

11 THE WITNESS: I have no
12 information about that.

13 BY MR. PLACITELLA:

14 Q. Okay. You have no such evidence,
15 correct?

16 MR. FARRELL: Same objections.

17 THE WITNESS: Correct.

18 BY MR. PLACITELLA:

19 Q. Am I correct that from 1984 until
20 2006 there was never a period exceeding three
21 years where Engelhard was not sued in an
22 Emtal talc case?

23 MR. FARRELL: Objection to form
24 and foundation.

1 THE WITNESS: I have no
2 information that would allow me to answer
3 that.

4 BY MR. PLACITELLA:

5 Q. Okay. In terms of the document
6 retention policy that you finalized in 1984,
7 how long did you have to retain evidence that
8 was generated in a lawsuit?

9 MR. FARRELL: Objection to form
10 and foundation; assumes facts; misstates
11 the policy.

12 THE WITNESS: I don't know.

13 BY MR. PLACITELLA:

14 Q. Did you know who Howard Shafer
15 was?

16 A. Yes.

17 Q. Who was he?

18 A. He ran the Johnson, Vermont talc
19 operations. He was our general manager.

20 Q. Okay. And did you ever have any
21 interaction with him?

22 A. I'm -- I think I probably met
23 him, but either at a -- a meeting in this
24 area or a -- a business meeting somewhere off

1 site. I never -- I never visited Johnson,
2 Vermont.

3 Q. Would he be somebody who would be
4 knowledgeable concerning the testing that
5 went on at the Johnson mine?

6 MR. FARRELL: Objection to form
7 and foundation and calls for speculation.

8 BY MR. PLACITELLA:

9 Q. If you know.

10 A. If testing took place on site, he
11 probably would know. If samples were
12 collected and tested elsewhere, he may or may
13 not know. I don't...

14 Q. He would know, though, who
15 visited the site for purposes of extracting
16 samples, correct?

17 MR. FARRELL: Objection to
18 foundation and form; calls for
19 speculation.

20 THE WITNESS: I would think so.

21 BY MR. PLACITELLA:

22 Q. If I was to ask for the person,
23 assuming he was alive, with the most
24 knowledge concerning the day-to-day

1 operations of the Johnson mine, would it be
2 Howard Shafer?

3 MR. FARRELL: Same objections.

4 THE WITNESS: It would during
5 the period of time when he was general
6 manager.

7 BY MR. PLACITELLA:

8 Q. Okay. Did there ever come a
9 point in time when Engelhard sold the Johnson
10 mine to another entity?

11 A. I don't think so.

12 Q. Okay. So I just want to be clear
13 on something you said before. Were you
14 actually involved in the due diligence
15 investigation being conducted by BASF before
16 the takeover of Engelhard?

17 MR. FARRELL: Objection to form
18 and foundation.

19 THE WITNESS: Yes.

20 BY MR. PLACITELLA:

21 Q. Okay. And did you understand
22 that the -- that due diligence investigation
23 required BASF to learn whatever significant
24 litigation risks faced them before the

1 takeover?

2 MR. FARRELL: Same objection.

3 THE WITNESS: Yes.

4 BY MR. PLACITELLA:

5 Q. Okay. And did you understand
6 that BASF's due diligence required them to
7 know any material information related to the
8 Emtal talc litigation?

9 MR. FARRELL: Objection to form
10 and foundation.

11 THE WITNESS: Yes.

12 BY MR. PLACITELLA:

13 Q. And were they actually made aware
14 of material information related to the Emtal
15 talc litigation as part of their due
16 diligence?

17 MR. FARRELL: Objection to
18 form; foundation; privileged; work
19 product; and common interest privilege.

20 I instruct you not to answer
21 the question.

22 MR. PLACITELLA: So let me just
23 break this down. I understand common
24 interest. That's a fight for another

1 day.

2 What is the work product and
3 what is the work -- and what is the
4 privilege?

5 MR. FARRELL: The work product
6 is that you're asking the general counsel
7 of a corporation for his assessment of
8 legal issues that were pending at the
9 time, and I take it we're in early -- or
10 spring of 2006, while there were cases
11 pending, and would also require him to
12 draw on the substance of communications
13 between himself and his client and
14 himself and Cahill Gordon.

15 So the question necessarily
16 asks for both his opinion, work product,
17 and for attorney-client communications
18 concerning active and pending litigation
19 at the time.

20 MR. PLACITELLA: Okay. Well, I
21 don't agree with that. What's the next
22 one? What's the privilege issue?

23 MR. FARRELL: I just covered
24 that one.

1 To answer these questions,
2 Mr. Dornbusch, I take it you would need
3 to draw on the substance of
4 communications between yourself and
5 Cahill or yourself and others at
6 Engelhard concerning the status of
7 pending litigation as of the spring of
8 2006, give or take, correct?

9 THE WITNESS: Yes.

10 MR. FARRELL: That was the
11 basis --

12 MR. PLACITELLA: Okay.

13 MR. FARRELL: -- for the
14 objection and instruction.

15 BY MR. PLACITELLA:

16 Q. The -- was BASF informed by
17 Engelhard prior to the acquisition in
18 June 2006 that there was evidence indicating
19 there was asbestos in Emtal talc?

20 MR. FARRELL: Same objections;
21 same instructions not to answer.

22 BY MR. PLACITELLA:

23 Q. Was BASF made aware that Emtal
24 talc cases were being defended, at least in

1 part, on the assertion that the Emtal talc
2 was asbestos free?

3 MR. FARRELL: Same objections;
4 same instruction not to answer.

5 BY MR. PLACITELLA:

6 Q. Do you know the answer to that
7 question?

8 A. I don't know.

9 Q. Okay. To what extent, if any,
10 was Engelhard management involved in the
11 construction of litigation strategies for
12 cases alleging exposure to Emtal talc?

13 MR. FARRELL: Objection to form
14 and foundation.

15 Am I correct, Chris, this --
16 you're just asking about roles --

17 MR. PLACITELLA: Uh-huh.

18 MR. FARRELL: -- roles people
19 had?

20 MR. PLACITELLA: Uh-huh.

21 THE WITNESS: I informed the
22 control group, senior management of the
23 company, and before that, the division,
24 of all litigation, and the talc

1 litigation, and my strategy for dealing
2 with it.

3 BY MR. PLACITELLA:

4 Q. Okay. And did that strategy
5 include assertions that the Emtal talc was
6 asbestos free?

7 MR. FARRELL: Objection to
8 form; foundation; privilege; work
9 product.

10 I instruct you not to answer
11 the question.

12 BY MR. PLACITELLA:

13 Q. Okay. Do you know whether any
14 non-lawyers ever provided information to BASF
15 concerning the issue of asbestos in Emtal
16 talc?

17 MR. FARRELL: Objection to form
18 and foundation.

19 THE WITNESS: I don't know of
20 any.

21 BY MR. PLACITELLA:

22 Q. Okay. Do you -- do you know
23 whether Jesse Pagonis ever had any meetings
24 with BASF concerning what he knew about the

1 asbestos content of Emtal talc?

2 MR. FARRELL: Objection to form
3 and foundation.

4 THE WITNESS: I'm pretty
5 certain that he did not. I believe he
6 retired sometime before this.

7 BY MR. PLACITELLA:

8 Q. That would have made it harder
9 then, wouldn't it?

10 A. Yes.

11 Q. Okay.

12 A. He's still around, but...

13 Q. Okay. Do you know what, if any
14 information Jesse Pagonis knew about the
15 asbestos content of Emtal talc as it related
16 to his job in risk management?

17 MR. FARRELL: Objection to
18 form; foundation; calls for speculation.

19 Can you answer this question
20 without drawing on the substance of
21 communications between yourself and
22 Mr. Pagonis --

23 THE WITNESS: No.

24 MR. FARRELL: -- concerning the

1 Emtal talc litigation?

2 THE WITNESS: No.

3 MR. FARRELL: Then I instruct
4 you not to answer on privilege grounds.

5 THE WITNESS: Mr. Pagonis is
6 also an attorney.

7 MR. PLACITELLA: Okay. The --
8 thank you for telling me that.

9 BY MR. PLACITELLA:

10 Q. At any point in time, after you
11 left Engelhard -- scratch that.

12 Did you ever undertake an
13 investigation yourself concerning what
14 happened to the research and development
15 documents related to Emtal talc?

16 MR. FARRELL: Objection to form
17 and foundation; assumes facts.

18 THE WITNESS: No.

19 BY MR. PLACITELLA:

20 Q. Okay. Did you ever form a
21 conclusion that the asbestos testing evidence
22 concerning Emtal talc no longer existed?

23 MR. FARRELL: Objection to form
24 and foundation.

1 THE WITNESS: I assumed that it
2 was disposed of in accordance with the
3 document retention policy of 1984.

4 BY MR. PLACITELLA:

5 Q. And when did that happen, in
6 1984?

7 A. Yes.

8 MR. FARRELL: Objection to
9 form.

10 BY MR. PLACITELLA:

11 Q. Do you know whether Engelhard
12 ever informed its insurance carriers or
13 insurance brokers that it was foreseeable
14 that they would be sued in asbestos cases
15 related to talc?

16 MR. FARRELL: Objection to form
17 and foundation.

18 Can you answer that with a yes
19 or no as to whether you know the answer
20 to that question?

21 THE WITNESS: Yes.

22 MR. FARRELL: Do you know the
23 answer to it?

24 THE WITNESS: Yes. The answer

1 is yes.

2 MR. PLACITELLA: Okay. Can you
3 just read back the question. I want to
4 make sure I got it right.

5 (Whereupon, the court reporter
6 read back the record as requested.)

7 MR. FARRELL: And,
8 Mr. Dornbusch, I understood you to say
9 yes, you know the answer to the question.
10 In terms of the substance of
11 communications on this subject matter
12 between Engelhard and the insurer, I want
13 to caution you not to disclose the
14 content of privileged or work product
15 information. I think the answer to --
16 the substantive answer to that question
17 would be covered by privileges and I
18 would instruct you not to answer them.

19 MR. PLACITELLA: So we're
20 clear, it's your position that
21 disclosures to insurance carriers by
22 Engelhard is protected by privilege
23 concerning the subject matter we just
24 went -- went over?

1 MR. FARRELL: Not all
2 disclosures. You asked about a very
3 specific disclosure. And the specific
4 disclosure you asked about would be
5 protected by privilege, the common
6 interest privilege, and work product.
7 And that was why I objected as I did.

8 MR. PLACITELLA: So it's your
9 position that there's a common interest
10 privilege between Engelhard and its
11 insurance carrier, and that's why he's
12 not allowed to answer the question?

13 MR. FARRELL: In this context,
14 yes.

15 MR. PLACITELLA: Okay.

16 MR. MARINO: Chris, do you have
17 a lot more?

18 MR. PLACITELLA: I have some.

19 MR. MARINO: Let me take five
20 minutes.

21 THE VIDEOGRAPHER: The time is
22 now 3:27 p.m. We're going off the
23 record.

24 (Whereupon, there was a

1 discussion held off the record.)

2 (Whereupon, a brief recess was
3 taken.)

4 THE VIDEOGRAPHER: The time is
5 now 3:42 p.m. We are back on the record.

6 BY MR. PLACITELLA:

7 Q. Mr. Dornbusch, at the time of the
8 takeover by BASF, who was working on the
9 Emtal talc litigation who stayed on with BASF
10 after the takeover?

11 MR. FARRELL: Objection to form
12 and foundation.

13 BY MR. PLACITELLA:

14 Q. If you know.

15 A. I'm not -- I don't have an
16 independent recollection. Based on documents
17 that I've seen here today, I -- I would be
18 tempted to say Mike Hassett. But I don't
19 know that of my own recollection.

20 Q. Okay. Do you know whether
21 Engelhard's management took any risk control
22 or management steps relating to the asbestos
23 content of Emtal talc?

24 MR. FARRELL: Objection to form

1 and foundation.

2 THE WITNESS: I'm not --

3 MR. FARRELL: In what context

4 and time?

5 BY MR. PLACITELLA:

6 Q. Well, during the time that you
7 served as general counsel and corporate
8 secretary, did Engelhard's management take
9 any risk control measures to address the
10 issue of asbestos in Emtal talc?

11 A. I'm not --

12 MR. FARRELL: Objection to form
13 and foundation.

14 THE WITNESS: I was going to
15 say, I'm not sure what you mean by risk
16 control measures.

17 BY MR. PLACITELLA:

18 Q. Okay. Any measures taken in
19 terms of -- well, wait. Let me -- I'll
20 rephrase it.

21 During the time you were
22 general counsel and corporate secretary, did
23 Engelhard's management ever take any steps in
24 terms of minimizing the risk of financial

1 loss related to the issue of asbestos in
2 Emtal talc?

3 MR. FARRELL: Objection to form
4 and foundation.

5 THE WITNESS: No.

6 BY MR. PLACITELLA:

7 Q. Okay. Did you ever provide to
8 the board facts concerning -- not legal
9 advice, but facts concerning the results of
10 asbestos testing of Emtal talc?

11 MR. FARRELL: Can you answer
12 that with a yes or no as to whether that
13 subject matter was addressed between you
14 and the board without getting into the
15 substance of it?

16 THE WITNESS: No, I cannot.

17 BY MR. PLACITELLA:

18 Q. You can't say whether you
19 provided facts concerning the asbestos
20 content of Emtal talc versus legal advice?

21 A. I can't differentiate, no.

22 Q. Okay. Am I correct that your
23 testimony here today has been that the
24 discovery responses that were provided became

1 such a matter of routine that -- that Cahill
2 was basically allowed to submit those
3 responses without them running them by you?

4 MR. FARRELL: Objection to
5 form.

6 MR. BOYLE: Join in that
7 objection.

8 THE WITNESS: Yes.

9 BY MR. PLACITELLA:

10 Q. Okay. And when I say a matter of
11 routine, the information that was contained
12 in there, they were pretty much the same in
13 any case; is that fair?

14 MR. FARRELL: Objection to form
15 and foundation.

16 MR. BOYLE: Join.

17 MR. BOISE: Mischaracterizes
18 the record.

19 MR. BOYLE: Join in those
20 objections.

21 BY MR. PLACITELLA:

22 Q. You answer it.

23 A. Yes.

24 Q. Okay. And am I correct, based on

1 your testimony, that the correspondence, like
2 you saw today, became such a matter of
3 routine that Cahill would send correspondence
4 out like that to plaintiffs' lawyers without
5 getting your prior approval?

6 MR. FARRELL: Objection to
7 form; foundation; calls for speculation.

8 THE WITNESS: Yes.

9 BY MR. PLACITELLA:

10 Q. Okay. Now, if BASF asserted that
11 it was unaware of the evidence of the
12 Westfall case prior to 2009, would that be a
13 correct assertion?

14 MR. FARRELL: Objection to
15 form; foundation; attorney-client
16 privilege; work product.

17 I instruct you not to answer
18 the question.

19 BY MR. PLACITELLA:

20 Q. Could you answer that question?

21 A. Could I?

22 Q. Yeah.

23 A. Yes.

24 Q. Okay. If BASF asserted that it

1 was unaware of any evidence indicating there
2 was asbestos in Emtal talc prior to 2009,
3 would that be accurate? I'm not representing
4 to you that's what they said. I'm asking
5 you, would that be accurate?

6 MR. FARRELL: Same objections;
7 same instruction not to answer.

8 BY MR. PLACITELLA:

9 Q. Could you answer that question?

10 MR. BOYLE: Could you repeat
11 the question, please.

12 (Whereupon, the court reporter
13 read back the record as requested.)

14 MR. BOYLE: And you're just
15 asking if he could answer?

16 MR. PLACITELLA: Uh-huh.

17 THE WITNESS: I could answer
18 that, yes.

19 BY MR. PLACITELLA:

20 Q. To your knowledge, was
21 Engelhard's management aware of the
22 litigation defense strategies that were being
23 executed by Cahill Gordon in the defense of
24 the Emtal talc litigation?

1 MR. FARRELL: Objection to
2 form, foundation. I think this has
3 already been asked and addressed through
4 a privilege instruction and instruction
5 not to answer in light of Mr. Dornbusch
6 indicating he would need to disclose the
7 contents of such communications to answer
8 the question.

9 So I'll instruct him not to
10 answer it again.

11 BY MR. PLACITELLA:

12 Q. Can you answer that question?

13 MR. BOYLE: He's been
14 instructed not to answer.

15 MR. FARRELL: Well, he's been
16 instructed not to answer.

17 BY MR. PLACITELLA:

18 Q. Are you able to answer that
19 question but for the instruction?

20 A. Yes.

21 Q. Okay. Did Engelhard's management
22 authorize the litigation strategies executed
23 by Cahill Gordon in the defense of the Emtal
24 talc litigation?

1 MR. FARRELL: Same objections;
2 same instructions not to answer the
3 question.

4 MR. PLACITELLA: Okay. Just,
5 what's the basis?

6 MR. FARRELL: Privilege and
7 work product.

8 MR. PLACITELLA: It's
9 privileged whether the management had
10 authorized the information -- the
11 strategies? That's privileged?

12 MR. FARRELL: Well, I think
13 that Mr. Dornbusch was in management and
14 had already indicated that he was
15 involved in the strategy.

16 I understood your question to
17 be more referring to other members of
18 management. And I do not know how
19 Mr. Dornbusch would answer what they did
20 or did not authorize without revealing
21 the content of communications between
22 himself and management about the
23 strategy for handling litigation.

24 So yes, I'm asserting

1 privilege and work product over the
2 question -- in response to the question.

3 BY MR. PLACITELLA:

4 Q. All right. Do you know whether
5 management, other than yourself, was aware of
6 the strategy in defending Emtal talc
7 litigation to assert that Emtal talc was
8 asbestos free?

9 MR. FARRELL: Objection to
10 form; foundation; asked and answered.

11 He -- he's asking you whether
12 you know the answer to that question. I
13 believe you've already testified that
14 you know the answer to the question, but
15 I've instructed you not to answer it.

16 THE WITNESS: Okay.

17 BY MR. PLACITELLA:

18 Q. Do you know the answer to the
19 question?

20 A. I'm afraid I've lost track of the
21 question.

22 Q. Okay. Am I correct that
23 Engelhard's employees were involved in -- in
24 implementing the litigation strategies that

1 were being employed by Cahill Gordon?

2 MR. TUNIS: Objection to form.

3 MR. BOYLE: Objection to form.

4 MR. FARRELL: Form and

5 foundation.

6 BY MR. PLACITELLA:

7 Q. You can answer it.

8 A. Yes.

9 Q. Okay. During the time that
10 Engelhard was involved in litigation
11 concerning Emtal talc claims, was it aware of
12 the litigation strategies being used to
13 defend those cases?

14 MR. BOYLE: Are you -- you're
15 asking about the entire corporation, his
16 knowledge --

17 MR. PLACITELLA: Generally
18 speaking --

19 MR. BOYLE: He's not a
20 corporate representative.

21 MR. PLACITELLA: -- speaking.
22 I'll ask him what he knows.

23 MR. FARRELL: Objection to form
24 and foundation; asked and answered.

1 MR. PLACITELLA: You can
2 answer.

3 THE WITNESS: Could I have the
4 question, please.

5 (Whereupon, the court reporter
6 read back the record as requested.)

7 MR. PLACITELLA: No. You
8 didn't get it right. Let me ask it
9 again.

10 BY MR. PLACITELLA:

11 Q. During the time that Engelhard
12 was involved in the litigation concerning
13 Emtal talc cases, were -- was its insurance
14 carriers aware of the defense strategies that
15 were being used to defend those cases?

16 MR. FARRELL: Objection to
17 form; foundation. That's a different
18 question than the one that was just
19 asked.

20 But do you know the answer to
21 the question?

22 THE WITNESS: I -- I don't -- I
23 don't know the answer.

24 BY MR. PLACITELLA:

1 Q. Okay. That obviates my last --
2 next two questions.

3 During the time that Engelhard
4 was involved in the litigation of Emtal
5 claims, do you know whether its insurance
6 carriers were aware of evidence indicating
7 there was asbestos in Emtal talc?

8 MR. FARRELL: Objection to form
9 and foundation.

10 Do you know the answer to the
11 question?

12 THE WITNESS: I don't know.

13 BY MR. PLACITELLA:

14 Q. Do you know, during the time that
15 Engelhard was litigating the Emtal talc
16 cases, whether its insurance carriers were
17 aware that litigants were being told that
18 Emtal talc was asbestos free?

19 MR. FARRELL: Objection to form
20 and foundation.

21 Again, do you know the answer
22 to the question?

23 THE WITNESS: I do not know.

24 BY MR. PLACITELLA:

1 Q. As you sit here today, are you
2 aware of any claim or demand being made upon
3 you relating to the facts asserted in this
4 case by either BASF, Cahill, or Mr. Halket?

5 MR. BOYLE: Objection.

6 MR. FARRELL: Objection; form.

7 THE WITNESS: No.

8 BY MR. PLACITELLA:

9 Q. Okay. Have you or anyone on your
10 behalf asserted a claim or demand upon BASF
11 relating to the facts in the Williams case?

12 MR. BOYLE: Objection.

13 MR. FARRELL: Objection to
14 form.

15 THE WITNESS: No. No.

16 MR. PLACITELLA: When lawyers
17 flip through pages, that's good.

18 Oh, Marino's here; I'm done.

19 No. No. Okay. I'm going to
20 take five and look, but I think I'm
21 there, okay.

22 THE VIDEOGRAPHER: The time is
23 now 3:56 p.m. We're going off the
24 record.

1 (Whereupon, there was a
2 discussion held off the record.)

3 (Whereupon, a brief recess was
4 taken.)

5 THE VIDEOGRAPHER: The time is
6 now 3:59 p.m. We are back on the record.

7 BY MR. PLACITELLA:

8 Q. I assume that if I spent an hour
9 going through P-1, one document at a time,
10 you'd basically say whatever's in there is in
11 there and you have no independent
12 recollection; is that fair?

13 A. Yes.

14 MR. PLACITELLA: Okay. Now,
15 other than my challenging privilege
16 issues and subject to any other
17 questions, I appreciate your time.

18 THE WITNESS: Thank you.

19 MR. FARRELL: No questions from
20 BASF at this time.

21 MR. MARINO: I have no
22 questions for Mr. Dornbusch at this time.

23 MR. PLACITELLA: Okay.

24 MR. BOISE: No questions at

1 this time.

2 MR. TUNIS: No questions for
3 Halket.

4 MR. PLACITELLA: Wait a second.
5 Wait a second. You cut -- off the
6 record.

7 (Whereupon, there was a
8 discussion held off the record.)

9 THE VIDEOGRAPHER: The time is
10 now 4 o'clock p.m. This conclude's
11 today's deposition. We're going off the
12 record.

13 (Whereupon, there was a
14 discussion held off the record.)

15

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CERTIFICATE

I hereby certify that the proceedings and
evidence noted are contained fully and
accurately in the notes in the deposition of
of the above matter, and that this is a
correct transcript of the same.

Deborah A. Brazukas



DEBORAH A. BRAZUKAS, RPR

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1 CERTIFICATE OF DEPONENT

2

3

4 I, ARTHUR DORNBUSCH, have read
5 the entire transcript of my testimony taken
6 on Monday, May 14, 2018, contained within
7 Pages 1 through 296, and it is true, correct
8 and complete to the best of my knowledge,
9 recollection and belief, except for the list
10 of corrections, if any, attached on a
11 separate sheet herewith.

12

13 _____

14 ARTHUR DORNBUSCH DATE

15

16 SUBSCRIBED AND SWORN to before me this

17 _____ day of _____, 2018,

18 in the jurisdiction aforesaid.

19

20 _____

21 My commission expires Notary Public

22

23

24

1 ERRATA SHEET

2 CASE CAPTION: WILLIAMS, ET AL. VS.

BASF CATALYSTS, LLC, ET AL.

3

DEPONENT: ARTHUR DORNBUSCH

4

5 PAGE LINE CORRECTION

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23 SIGNATURE: _____ DATE: _____

24 ARTHUR DORNBUSCH

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